United States Court of Appeals for the Second Circuit



APPENDIX

74-2496

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

V

J. W. Mays, Inc., RESPONDENT.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

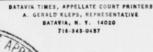
APPENDIX

Elliott Moore,

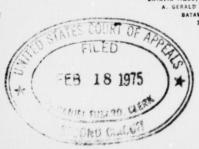
Deputy Associate General Counsel,

National Labor Relations Board.

Washington, D. C. 20570.







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Chronological List of Relevant Docket Entries.

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6. 19. 73	Charge in Case no. 29-CA-3441, filed
6.28.73	Charge in Case no. 29-CA-3458, filed
7. 2.73	First Amended Charge in Case no. 29-CA-3458, filed
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9.27.74

JD-221-74 Massapequa, N.Y.

UNITED STATES OF AMERICA

Before the National Labor Relations Board Division of Judges Washington, D.C.

J. W. MAYS, INC.,

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO AND LOCAL 307, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

and

LAURA GRIBBINS.

Cases 29-CA-3441, 29-CA-3458, 29-CA-3519.

Stephen E. Appell, Esq., for the General Counsel.

Seymore W. Miller, Esq., and William E. Seeger, Esq. (Miller and Seeger), N. Y., N. Y., for the Respondent.

Mr. Joseph Lunger, Westbury, N. Y., for Local 30, IUOE.

Ms. Laura Gribbins, Seaford, N.Y., pro se, for the Individual Charging Party.

STATEMENT OF THE CASE.

ROBERT COHN, Administrative Law Judge: This consolidated proceeding, tried before me at Brooklyn, New York, on 8 hearing days commencing December 18, 1973, and concluding January 11, 1974, involves a complaint issued pursuant to Section 10(b) of the National Labor Relations Act, as amended (herein the Act), alleging that J. W. May's, Inc. (herein the Company or the Respondent) violated Section 8(a) (1), (3) and (4) of the Act by engaging in various acts and conduct more fully detailed herein. By its duly filed answer, the Respondent denied the commission of any unfair labor practices.

At the conclusion of the hearing, oral argument was waived. However, following several requests for post-ponements by counsel for the Respondent, helpful, post-hearing briefs were filed with me within the time allowed by the orders granting the postponements, by counsel for the General Counsel and by counsel for the Respondent, which have been duly considered. Upon the pleadings stipulations and arguments of counsel, the evidence, including my observation of the demeanor of the witnesses,² and the entire record, I make the following:

Dated September 14, 1973, based upon charges filed June 19, 1973 (in Case 29-CA-3441), June 28, 1973, amended July 2, 1973 (in Case 29-CA-3458), and August 23, 1973 (in Case 29-CA-3519). All dates hereinafter refer to the calendar year 1973 unless otherwise indicated.

² Cf. Bishop and Malco, Inc., d/b/a Walker's, 159 NLRB 1159, 1161.

FINDINGS OF FACT.

I. COMMERCE.

Respondent, a New York corporation, is, and has been at all times material herein, engaged in the business of retail sale and distribution of clothing, household appliances, jewelry, cosmetics, and related products. It owns and operates a chain of retail stores located in various communities in the Greater New York area. Its retail store located at Massapequa, New York, is the only facility directly involved in this proceeding.

In the course and conduct of its business operations, which are headquartered in Brooklyn, New York, Respondent annually derives gross revenue in excess of \$500,000. In addition, Respondent annually purchases and causes to be transported and delivered to its places of business, goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its places of business in interstate commerce directly from states of the United States other than the State of New York.

Based upon the foregoing, I find that the Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED.

Local Union No. 30, the International Union of Operating Engineers, AFL-CIO (herein Local 30), and Local 307, Service Employees International Union, AFL-CIO (herein Local 307), and each of them, are labor organizations within the meaning of Section 2 (5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES.

A. Background.

On March 22, Local 30 filed a petition with the Regional Office of the National Labor Relations Board seeking an election for the purpose of representing seven employees employed by the Respondent in the maintenance department at its Massapequa store. Following a hearing on such petition in April and May, the Regional Director, on May 29, issued his Decision and Order in which he found that the unit sought by the petitioner was inappropriate for collective bargaining due to the fact that the employer also employed 12 additional maintenance employees in its maintenance-housekeeping department who performed substantially similar work as the employees petitioned for. Accordingly, the Regional Director ordered that the petition be dismissed.³

The record shows that, thereafter, the union representatives sought to solicit other maintenance employees, including display department employees, in their cause, and on June 19, another petition was filed by Local 30 (along with Local 307 as joint petitioner) seeking to represent a broader unit of maintenance employees at the Respondent's Massapequa store. Following a hearing in July, the Regional Director, on August 30, issued his Decision and Order dismissing that petition also on the ground that the unit sought was inappropriate for the purpose of collective bargaining.

It is the position of the General Counsel that the alleged unfair labor practices arose as a result of the Respondent's extreme hostility toward the organizational efforts of its maintenance employees to achieve union representation.

³ See General Counsel's Exhibit No. 2(b); Case No. 29-RC-2202.

⁴ Case No. 29-RC-2287.

B. The Alleged Discrimination as Respects Michael Brandt.

The record reflects at all times material Brandt was an employee in the maintenance department of the Massepequa store, having been hired on January 8, and was discharged on June 13. In the maintenance department, he performed repairs to equipment and did "lamping," *i.e.*, replaced light bulbs throughout the store. His immediate supervisor was Paul DeRonde, who was, at all times material, in charge of the maintenance department.

Brandt was a leader in Local 30's campaign to organize the employees of the maintenance department. He solicited other maintenance employees to signed union authorization cards, attended union meetings which were, at that time, normally held after working hours on the Company's parking lot, and testified on behalf of the Union at the NLRB hearing on May 2.

On or about the day following issuance of the Regional Director's Decision in 29-RC-2202 (May 29), Brandt had a discussion with DeRonde concerning the matter in the latter's office.⁵ In that conversation DeRonde stated that regardless

Cannon also credibly testified that in a conversation with DeRonde in March the latter had spoken against the Union, and told maintenance employees that it would not be to their benefit to join.

⁵ It is established that DeRonde was aware of the union campaign at that time since he testified at the NLRB hearing on May 2. It is further established that DeRonde knew of the decision at that time through a telephone call from employee John Cannon, an employee in the maintenance department at that time. Cannon had been an active adherent of the Union, and had telephoned the Company seeking to talk with another employee when DeRonde answered the phone. DeRonde told Cannon that the employee was not available and asked Cannon if a message could be delivered. Cannon told him to tell the employee that the decision of the NLRB had been rendered.

of whether the Union won or loss, the maintenance employees would be terminated because "Mr. Katz (a Vice President of Respondent) had a hate for all of us and that he was going to get rid of us one way or the other. . . "DeRonde also advised Brandt that because of the union campaign, all chances for advancement for any of the employees had been stopped and particularly as respects Brandt's chance for promotion to the position of DeRonde's assistant.⁶

DeRonde denied having any conversations with Brandt concerning the Union. However, DeRonde was not impressive as a witne s, appearing more on the witness stand as having a desire to please his employer with his testimony rather than a strict adherence to the truth. On the other hand, while his testimony was not always the epitome of clarity, Brandt did seem to attempt to recall the events with honesty and candor. Accordingly, I credit the testimony of Brandt and discredit that of DeRonde as respects the foregoing, and find that the threat of recrimination and loss of possible benefits because of union activities constitutes a violation of Section 8(a) (1) of the Act.

As previously noted, following the decision of the Regional Director on May 29, in which he dismissed the Union's petition, the Union made additional efforts to solicit other employees (primarily in the maintenance-housekeeping and display departments) to join their cause. Brandt took an active part in such solicitation and such conduct resulted in his being called into the office of the store manager, Mr. Kaye,

⁶ Testimony of Brandt. It appears that the position of assistant to DeRonde came open at the first of the year, and that shortly after Brandt was hired, DeRonde spoke to him favorably concerning the matter. Thus DeRonde testified that he told Brandt that if the latter continued to show aggressiveness and the proper attitude, he would be considered for an assistant's job. This conversation took place in January or early February.

on June 7. Present in the office in addition to Kaye were the Respondent's executive vice president, Simon Katz, along with Foreman DeRonde. Katz told Brandt that the latter had no right to be soliciting on the behalf of the Union on the Company's selling floor; that if he wanted to solicit he could do so in the lunchroom, or in the locker room, or on the parking lot, but he could not stop work of others on the selling floor. Katz also stated that if it happened again, Brandt would be dismissed. Brandt denied any union involvement at that time.

DeRonde testified that he had been getting reports for sometime prior to June 11, that Brandt was not performing his principal job-lamping-in a satisfactory manner. These reports assertedly derived from the employees in other departments of the store as well as from "men in the shop."8 On Monday, June 11, DeRonde came in to work at approximately 7:15 a.m., and observed Brandt talking to Laura Gribbins in the hardware department. He did not overhear the conversation, but observed that Brandt was not working. During the 9 o'clock break, in the cafeteria, DeR ande confronted Brandt and asked him if he had been doing his lamping. When Brandt answered affirmatively, DeRonde accused him of lying since his bulb cart had been in the shop all of the time. Shortly thereafter, according to DeRonde's testimony, Brandt stopped in his office and apologized, to which DeRonde responded "All right, Mike, just forget about it. Just do your job." Following that exchange, DeRonde called

⁷ Following the June 7 meeting, Katz placed a warning in Brandt's file jacket to the effect that "any repetition of the above soliciting or organizing on the Company's time and working premises would lead to his immediate dismissal." (General Counsel Exhibit No. 13).

⁸ No corroborative evidence was adduced from these persons to this effect. However, Respondent made it clear at the hearing herein that any such derelictions were not the motivating reason for Brandt's termination.

Vice President Katz and told him that "Michael Brandt is not doing his work. He's playing me for some kind of idiot. What do I do about it?" Katz advised that he give Brandt a reprimand. Accordingly, DeRonde secured a reprimand blank from the personnel office, filled it out and requested Brandt to sign it. The latter refused.

On June 13, DeRonde was asked to summon Brandt to Kaye's office. DeRonde testified that he asked Brandt, "What the hell did you do now?" Brandt, responded, "Gee, I don't know." When they arrived at Store Manager Kaye's office, Vice President Katz was there. Katz testified that he had been notified on the evening of June 12, "that Mr. Brandt had again been soliciting in the store on company time, on the selling floor, and stopping people from working." Brandt again denied engaging in any such conduct, but Katz stated that he did not believe him, and terminated Brandt at that time.

Analysis and Concluding Findings as to the Discharge of Brandt.

Respondent contends that its termination of Brandt was legally sanctioned because he violated Respondent's rule against solicitation, which had been in effect for a number of years, and which was a valid rule. I find that the evidence does not sustain the Respondent's position on this aspect of the case.

In the first place, there is a grave question as to whether or not any such rule existed during the time of events in question. The evidence shows that for some period of time

⁹ The text of the reprimand states as follows:

Mr. Brandt is required to relamp and change burned out ballast in the morning hours from 7 a.m. to 9 a.m. Instead he spent this time walking around the store and sometimes speaking to other employees.

prior to September 1972, the Respondent did publish a booklet which was distributed to all new employees, which generally advised them of the rights, privileges, benefits and obligations of an employee of Respondent. The booklet contains, *inter alia*, 11 directions to employees concerning their personal conduct, the first two paragraphs of which state as follows:

- 1. Refrain from holding personal conversations during work.
- 2. There must be no solicitation or distribution of any sort during work or in any of the public areas of the store. 10

However, assuming that such directions constitute rules of conduct for employees for which sanctions would be imposed, the fact remains that the booklet itself was not circulated to employees subsequent to September 1972. The reason for this was as Vice President Katz explained, because there was some dispute about it with the Department of Labor which resulted in litigation, and the Respondent ceased publishing the booklet. Although Katz testified that new employees received instructions orally from the personnel department, there is clearly a lack of substantial evidence in this record that employees were aware in 1973, that such a rule existed.

Indeed, the record is replete with evidence that solicitations for other events and purposes were carried on during working hours in the store with the approval of management. Thus, the evidence shows that there existed at all relevant times an

¹⁰ See Respondent's Exhibit No. 4, p. 14.

[&]quot;For example, Foreman DeRonde testified that he did not know whether there was a rule against "solicitation for anything" prior to Katz' directions to Brandt regarding soliciting for the Union.

employee organization known as May's Employees Association (M.E.A.) which was apparently a voluntary organization of employees whose purpose was to plan social events, vacation trips, and the like. In connection with their activities solicitations were made from the employees for these purposes as well as to collect money for flowers for death in the family, etc. In addition to these activities there is evidence that the management called a meeting of employees during store hours for the purpose of soliciting funds for bonds for the State of Israel, and for the United Fund. Under these circumstances, it may be fairly concluded that the rule was not enforced until the Union appeared on the scene. I therefore find that it was discriminatorily applied in Brandt's case, and therefore could not have provided a valid ground for his termination.¹²

But even assuming the validity of the rule, I would still find there was insufficient evidence to sustain the burden of the employer that "he was motivated by legitimate objectives" in effectuating the termination. That is to say that prior to the initial warning by Katz to Brandt on June 7, Brandt acknowledged that he had been soliciting employees for the Union during working hours. However, following the warning he ceased such conduct during working hours and on the selling floor. There is a dearth of evidence proffered by Respondent that Brandt broke the rule during the week following June 7, which would provide a legitimate basis for Katz' "information" that Brandt had engaged in such conduct. The evidence reflects only one incident, testified to by Florine Strayhorn, a witness for Respondent, that on or about June 12, around lunchtime, Brandt was going down the steps

¹² See e.g., Taylor Instrument Companies, 165 NLRB 843, 844.

¹³ N. L. R. B. v. Great Dane Trailers, Inc., 388 U. S. 26, 34 (1967).

from the first floor to the basement when he encountered her and asked if she would be interested in joining the Union. She told him that she was not interested. That was the extent of the conversation. Certainly, this incident, occurring apparently during the lunch hour, not on the selling floor and not interfering with the work of the matron, would not provide a sufficient and valid basis for the imposition of the rule. 14

In view of all the foregoing, I find and conclude that the termination of Brandt on June 13, was to discourage membership in and activities on behalf of the Union, and therefore discriminatory within the meaning of Section 8(a)(3) of the Act. Since it may be reasonably inferred that the termination was also in retaliation for Brandt's testimony in the NLRB representation matter, I also find and conclude that the

All of the foregoing, considered in the light of other evidence hereinafter adverted to, appears to confirm the argument of counsel for the General Counsel that Respondent engaged in a countercampaign to harass and rid itself of the small group of maintenance men who commenced the union campaign in the Respondent's store.

¹⁴ In view of the reliance by Respondent upon breach of the nosolicitation rule as the sole basis for the discharge of Brandt, I have given no weight to the incident of June 11, wherein DeRonde reprimanded Brandt for not properly performing his work. This incident, of course, did not involve any alleged breach of the no-solitation rule, and, in any event, appears somewhat contrived for the purpose of "building a case" against Brandt. That is to say, up to that point, there had been no criticism of Brandt's work performance by Respondent; indeed, he had been considered for possible promotion. Moreover, as DeRonde testified, following the incident Brandt apologized and DeRonde told him "All right, just forge' about it. Just do your job." That would normally seem sufficient to end one matter, but curiously enough, DeRonde then called the vice president of the Company to ask him what to do about the situation. Certainly such conduct by a foreman, who was well aware of his power and authority to deal with such matters, would not ordinarily involve the vice president of a concern as large as Respondent with such a relatively minor breach of work performance.

discharge violated Section 8(a)(4) of the Act. I will, therefore, recommend an appropriate remedy.

C. The Alleged Discrimination as Respects William Fazio

Fazio commenced work for the Respondent in March 1971, and was employed until June 8, when he was laid off. He commenced his employment as a display carpenter, but was later transferred to the job of carpenter's helper (which involved more heavy carpentry). His supervisor at the time of termination was Charles Hord. 15 Fazio's union activities consisted of his signing a union authorization card upon the request of Michael Brandt at the end of the workday, approximately a week before Fazio's termination. As it was at the end of the workday, Fazio and Brandt proceeded to the Company's parking lot where they met employees John Cannon and Sai Gambino. 16 While the four men were standing together talking for approximately 5 to 10 minutes, Fazio noticed that two of the Respondent plainclothes detectives appeared to be watching them.

The following morning at approximately 8:30, Fazio encountered Brandt who was at the time replacing some light bulbs between the first and second floor escalators. While chatting with Brandt for a moment, Fazio noticed that Store Manager Kaye came down the escalator and stood there at the bottom of the escalator for approximately 30 seconds to a minute "staring at us."

¹⁵ At that time, Hord was a supervisor over the display department of several of Respondent's stores, as detailed more fully *infra*.

¹⁶ Cannon, a night maintenance man, was an instigator of the union movement in the Respondent's store.

According to Fazio's testimony, on June 8, at approximately 10:30 a.m., Hord called him into his office and advised that he had "just got word from Brooklyn that he had to cut down on the hours and the help and he had to let three people go, and I was one" Hord further stated that Fazio would have his pay by 1:00 but that he could finish out the day if he wanted to because they were busy working on cash register units. Fazio replied that it was nice working for him.

A short while later, Fazio told Mike Brandt that he had been laid off; Brandt instructed Fazio to return to work and that he (Brandt) would contact the Union. Fazio further testified that while "he did not think anyone saw me talking to him (Brandt), on my way back, when I was going back to the shop Mr. Kaye came up the escalator and he saw me." Shortly thereafter Hord was paged over the loudspeaker following which Fazio was called into Hord's office. Hord advised Fazio that "your pay is ready, go up and get your pay and you have to leave the building right away."

The evidence showed that following Fazio's layoff on June 8, employee Ronnie Smith, who had succeeded Fazio as a display carpenter, helped to perform the work which Fazio was doing when laid off, *i.e.*, working on the cash register units. However, there is no evidence that Respondent ever hired another employee to replace Fazio.

Analysis and Concluding Findings as to William Fazio

Although some of these circumstances surrounding this case are suspicious, I agree with Respondent that General

¹⁷ The other two were a girl who was getting married in about 2 or 3 weeks, and the third was Paul Dashefsky, of which more, *anon*.

Counsel has not sustained his burden of proof on this issue. I shall therefore recommend that the complaint, as to Fazio, be dismissed.

At the threshold, we have the problem of proof of Company knowledge of Fazio's union adherence at the time of termination (which Respondent denies). Of course, Fazio testified that he was observed in the presence of both Brandt and Cannon who were both known by Respondent at the time to be active in the Union. However, this particular incident was not corroborated by either Cannon nor Brandt, and even if it were, a further step must be taken to infer that (1) the store detectives were "staring at" them rather than some other person or group on the parking lot; and (2) the store detectives reported such conduct to management (which they denied). The fact that Fazio was assertedly observed by Kaye while he (Fazio) was talking to Brandt the following morning adds little to the inference. It is questionable that an inference should be drawn that any person to whom Brandt spoke necessarily acceded to Brandt's solicitation (see, e.g., The Brandt-Strayhorn incident).

Secondly, even if the hurdle of company knowledge is cleared, the General Counsel did not, in my view, overcome the Respondent's defense that economic factors dictated a reduction in force at the time, and Fazio was not shown to have been in such a position that he could not have reasonably been chosen to be included in any such reduction in force. Thus, the record establishes that the Respondent's business is a seasonal one, and that June is a relatively slow month between the Easter and back-to-school sales events. Moreover, it is undisputed that Respondent keeps a close, weekly perusal of the ratio between revenue and payroll and that once any type of trend is established (either up or down), adjustments are made in payroll accordingly. The record reflects that net

sales for the Massapequa store showed a 7 percent drop in May, 1973 from that of 1972. There is nothing to contradict the Respondent's argument that it considered such a drop significant, and, taking into account that June is normally a slow month, that some reduction in force was required. 18

Finally, the legitimacy of the reduction in force is confirmed by the fact that Respondent did not thereafter (until at least the date of the hearing herein) hire a replacement for Fazio but "made do" with the carpentry help that it already had on the payroll. As Respondent points out, this amounts to a saving of \$130 per week based on Fazio's reduction alone.

Based upon all of the foregoing, I find and conclude that the General Counsel did not, by a preponderance of the evidence in the record, prove that the layoff of Fazio was in violation of the Act, and, as previously stated, I shall recommend that the complaint, as to him, be dismissed.

D. The Alleged Discrimination as Respects Paul Dashefsky

Dashefsky was hired as "summer help" on about May 21, and was assigned the job as painter's assistant in the display department. ¹⁹ As previously noted, the display department in the Massapequa store was supervised by Louis Manzi, who is, in turn, under the direction of Charles Hord.

On June 7, Dashefsky signed a union card for Brandt during a luncheon break in the cafeteria. Dashefsky was

¹⁸ The fact that June sales showed a slight increase in 1973 over the corresponding month of 1972, as argued by the General Counsel, is not persuasive since such figures could not have been ascertained until July and the decision to reduce the payroll was made during the first week in June.

¹⁹ The transcript states the year of hire as 1972; this is an apparent error.

unable to testify with any degree of certainty that any supervisor observed this transaction. However, he testified that on the following day during working hours he waved to Brandt on the occasion when he was "sure that Charles Hord saw me."

On June 8, Dashefsky was told by Hord that due to a slackening in business, the display department was being reduced in personnel and that Dashefsky would be transferred to another department. Thereafter, Dashefsky reported to the personnel department and was told that commencing June 11, he would start work as a nighttime porter. Respondent's evidence is at substantial variance from that of Dashefsky as to the reason for transfer. According to Hord, Dashefsky was hired in the display department because a painter was needed at the time. However, Dashefsky was incompetent as a painter and when Respondent's regular painter (Michael Rosario) returned to work after a leave of absence in June, Hord requested the personnel department to transfer him somewhere else. 20

Dashefsky worked one evening (June 11) as a nighttime porter. The supervisor of that department, Harry Schob, did not work on June 11, and Dashefsky did not come to work on June 12, due to asserted illness. When Schob returned to work on June 12, he checked with some of his men on the night crew and inquired how Dashefsky was "working out." According to Schob's testimony, employee Christopher Lynch stated that Dasefsky would not complete his jobs and that he (Lynch) would have to do them. Employee George Storm told Schob that Dashefsky asked him "if there was any place around there he could take a nap after awhile." On the basis of these reports, Schob advised the personnel department that

²⁰ I do not view a resolution of this particular credibility issue as critical to a determination of the ultimate issue of discrimination.

Dashefsky was "not working out at all, . . . so they told me they would take care of it."²¹

Analysis and Concluding Findings as to Dashefsky

Although suspicions are aroused because of the precipitate nature of the discharge following immediately upon the heels of Dashefsky's signing of a union authorization card, I find that the record fails to provide that substantial degree of evidence to sustain the General Counsel's burden of proof on this issue.

As in the case of Fazio, there is a paucity of evidence to show that Respondent knew of Dashefsky's union proclivities prior to the termination. Respondent denies such knowledge, and there is no definitive evidence that any management representative observed Dashefsky's signing the card for Brandt in the cafeteria. While Hord may have seen Dashefsky exhibit a friendly gesture to Brandt the following day, such an incident provides a slender reed upon which to base a finding of the requisite company knowledge of union activities.

Moreover, it is certainly plausible that Respondent would desire to transfer Dashefsky out of a painter's job (particularly where it considered him incompetent) upon the return to work of its regular painter. Indeed, as Respondent argues, had it sought to rid itself of an active union adherent, it might have rested its case there rather than go to the trouble of having him transfer to another department before termination. In any event, Dashefsky was apparently not happy

²¹ Schob's testimony on this aspect of the case was corroborated in its essential aspects by the testimony of George Strom, who was generally impressive as a witness. Christopher Lynch, a witness for the General Counsel, was not interrogated as to this aspect of the case.

about the prospects to transfer to his new job²² since he was told by the personnel department that while working in the maintenance-housekeeping department he would retain his old rate of pay (\$2.14 per hour) while the regular porter's pay was \$2.40 per hour. It is reasonable to infer that this circumstance would not induce superior performance on the part of Dashefsky, and tends to confirm the evidence that he was less than enthusiastic on the first night on the job. While, as above noted, doubts are raised because of the discharge after only one night's performance on the job, it is well established that it is not for this Board to oversee or second guess management decisions as to the proper discipline to invoke. "Management can discharge for good cause, for bad cause, for no cause at all. It has, as the master of its own business affairs, complete freedom with the one specific, definite qualification: it may not discharge when the real motivating purpose is to do that which Section 8(a)(3) forbids."23

Accordingly, I find that the General Counsel failed to sustain his burden of proof that the motivating reason for Dashefsky's termination was one which violated Section 8(a)(3) of the Act.

E. The Alleged Discrimination as Respects Bernard Murphy

Murphy was employed in the maintenance-housekeeping department as a porter. His job was to clean up about the store, both inside and outside, and perform such chores as sweeping and mopping the floors, picking up trash and

²² There is no allegation or contention by the General Counsel that the transfer was discriminatorily motivated.

²³ N. L. R. B. v. McGahey, et al., d/b/a Columbus Marble Works, 233 F. 2d 406, 413 (C. A. 5, 1956).

emptying it, and cleaning up around the dumpsters outside the store. His immediate supervisor was Harry Schob.

Murphy's union activities consisted of signing a card for Brandt on or about June 7, and giving out about five cards to other employees for their signatures. On or about June 7, Schob observed Brandt talking with Murphy, and after they separated, Schob asked Murphy what Brandt had said to him. Murphy replied that Brandt wanted to know if he (Murphy) would sign a union card. Murphy responded that he would let Brandt know, and returned to work.²⁴

Thursday, June 14, was Murphy's day off, but he came into the store for the purpose of getting a check. However, he entered the store by the platform entrance, which was apparently in violation of Company rules. The following day, Martin Zinkofsky, one of Respondent's higher supervisors, told Murphy that he understood Murphy had entered the store through an unauthorized entrance, and that if it happened again he was going to have to "write him up." Murphy responded, "If you have to write me up, be my guest,—do what you want to do." Later in the day, Murphy was called into Store Manager Kaye's office and presented with a written warning concerning the incident, which he signed. 26

²⁴ See statement of Schob (General Counsel's Exhibit No. 12). Murphy testified that he told Schob that if he could make more money by joining the Union, he was going to join.

As Respondent was well aware by this time of Brandt's prounion activities it may be reasonably assumed that Schob's interrogation of Murphy was for the purpose of eliciting information about that subject matter. This conduct, undertaken without any assurance to Murphy against recrimination constitutes, in these circumstances, coercive interrogation in violation of Section 8(a) (1) of the Act. I so find. See *Bourne v. N. L. R. B.*, 332 F. 2d 47 (C. A. 2).

²⁵ Testimony of Murphy.

²⁶ See Respondent's Exhibit No. 5.

Later the same afternoon, Murphy met his supervisor, Harry Schob who advised Murphy that "they are out to get you." Murphy responded, "What can I tell you?" Schob proposed that he would say that he caught Murphy smoking on the floor illegally, and would write him up to that effect. Murphy responded, again, "Harry, be my guest."

Murphy did not go into work on Saturday, June 16, because of illness. When he reported to work on Monday, June 18, Schob assigned him to work outside operating a machine known as the "billy goat." This machine was nothing more than a large vacuum cleaner that operated outside rather than inside the building. Murphy flatly refused to do the job. 27 Murphy was then assigned some inside work until approximately 10 a.m. when he called into Store Manager Kaye's office. Kay explained that it was part of Murphy's job to go outside and clean up if a superior told him to do it. Murphy questioned why he should do it that day when Mason did it every other day, and an argument ensued. Kay threatened that if it happened again he would have to let Murphy go. The latter retorted, characteristically, "be my guest."28 Murphy asserted that he had always given the Company a day's work for a day's pay, to which Kaye responded he had no complaint about his work.

After lunch that day, Kaye called Murphy back into his office and told him that he had reconsidered and thought it best that Murphy be terminated before there was an argument between Murphy and one of the other supervisors that would

²⁷ Murphy testified that the reason he refused was because it "was out of the ordinary altogether. They had one special porter, Jimmy Mason, that done [sic] that every day." This, however, is contradicted by other evidence of which more anon.

²⁸ Testimony of Murphy.

cause a scene in the store. Murphy was agreeable, and he left the store at that time.

Analysis and Concluding Findings as to Bernard Murphy

Unlike the cases of Fazio and Dashefsky, I find there is sufficient evidence in the record to impute to Respondent knowledge of Murphy's union proclivities subsequent to June 7. I am also inclined to agree with the argument of counsel for the General Counsel that Respondent was, indeed, seeking a pretext upon which to base Murphy's termination as evidenced by Schob's offer to write up Murphy for an offense he had not committed. However, Murphy, by his conduct, placed himself in an indefensible position even if it can be shown that Respondent planned to rid itself of known union adherents.

Thus, there is no dispute that the assignment which gave rise to Murphy's termination was one clearly within the purview of a porter's job. There is no evidence that operation of the "billy goat" was either dangerous or required a skill which was beyond Murphy's ability, and the latter did not so contend. He simply had never operated it and did not want to do it. 29 Perhaps Murphy felt that, following Schob's admonition to him that "Murph, they are out to get you," it was rather hopeless and futile to buck the power of Respondent to find a way to discharge him. This was evidenced by his response to every threat of reprimand—"be my guest."

²⁹ Both supervisor Schob and employee Storm testified that employees in the department other than Mason operated the "billy goat," and that it was done on a rotation basis. However, I do not deem it necessary to resolve this particular credibility issue for the purpose of determining the question of discrimination.

However, it does not follow that the termination of an employee under such circumstances necessarily results in a violation of the statute. It is well established that engaging in union or concerted activities does not immunize an employee from discipline.³⁰ Where an employee, by engaging in certain conduct (here insubordination), places himself in a vulnerable position, the fact that the employer may be glad that he so placed himself does not alter the consequences even if it can be shown that the employer was prounion and the employee antiunion.³¹

Here, the Company had a legitimate right to require Murphy to operate the "billy goat" machine. He refused. Under these circumstances, his union activities do not destroy the just cause for his discharge. I will therefore recommend that the complaint as to Murphy be dismissed.

F. The Alleged Discrimination as Respects Laura Gribbins

Gribbins commenced work for the Respondent at the Massapequa store in February 1969, in the display department. Her skill was in art work and her duties consisted primarily of designing and dressing windows, interior displays, and making signs and posters. It is acknowledged that during the course of her employment she was an exemplary employee. The record shows that she was hired at \$1.65 per hour and when she was terminated on August 21, she was earning \$3.50 per hour. Louis Manzi was her immediate supervisor in the display department, and, as has been previously pointed out, Charles Hord was the display director (Hord being in charge of the display departments in four

³⁰ See Metals Engineering Corp., 148 NLRB 88, 90.

³¹ See, e.g., N. L. R. B. v Nirmingham Publishing Co., 262 F. 2d 2, 9 (C. A. 5).

stores: Massapequa, Levittown, Woodmere and Glen Oaks). There were, at all times material, approximately six or seven employees in the display department at the Massapequa store.

Although the record is somewhat vague and indefinite as to date, the evidence shows that commencing in 1971, and continuing in 1972, Gribbins was requested by management, on occasion, to assist in the display departments in the Woodmere and Levittown stores. She testified that she requested and was granted a pay increase for doing this work but that she continually had transportation problems in reaching and returning from the other stores. ³² Because of such problems, Gribbins made it known to Hord prior to the events in this case that she did not desire to work at the other stores, and for many months prior to June she had not been assigned to work at the other stores.

On or about June 7, Gribbins signed a union card for Michael Brandt while in the elevator of the store going to her coffee break. On or about June 11, Supervisor Hord called her into his office and advised that she had been observed talking to Brandt in the hardware department earlier that morning. He inquired whether the subject matter of the conversation was concerning the Union. She said no—they had been talking about light fixtures. Then Hord asked her if she had heard anything about the Union and she answered affirmatively—that she was aware that the Union was being organized in the store. He then warned her that she should stay away from such people because other unions had tried to get into Mays, on previous occasions, but had never been suc-

³² Apparently, Hord promised her transportation but was not always able to carry out his promise and she was thus required to rely upon personnel in the other stores, which was distasteful to her. When working in Massapequa, she was able to ride a convenient bus from her home to and from work.

cessful, "and that people were getting fired because of this and that I should stay away from it." Gribbins then asked Hord if her raise had gone through and he responded that he would check into it. He asked her if she was interested in an assistant manager's job in display, and she answered yes. However, when he advised that such job would have to be in the Levittown store, she told him she could not get to Levittown, and was not interested. 34

Both Gribbins and Hord recalled a conversation on or about June 19, in which Hord requested and/or directed Gribbins to perform some work at the Levittown store. According to Hord, the display manager at the Levittown store, Mr. Igloi, requested Gribbins and Hord agreed. He proceeded to consult Gribbins about the matter and she became upset and stated she did not want to go. Hord attempted to persuade her, and they discussed her becoming an assistant display manager (although he denies having promised her such a position as a condition of going). Hord testified that Gribbins accused him of wanting to get her out of Massapequa because of the Union, to which he replied, "Laura, don't you even

³³ Credited testimony of Gribbins.

Hord denied having any conversation with Gribbins in which the term "union" was mentioned prior to June 19 (of which more anon). Indeed, he denied that he was aware of any union activity at the store prior to June 18 or 19. This seems rather incredible in view of the fact that the Union activities had been in progress since February and had included the filing of a petition with the NLRB, an NLRB hearing at which fellow Supervisor DeRonde and Vice President Katz had testified, and an Order of the Regional Director on May 29, concerning which DeRonde and other maintenance employees had been advised. Accordingly, I am unable to accept Hord's testimony in this regard.

³⁴ I find the interrogation and threat of discharge for engaging in union activities uttered by Hord on this occasion to be coercive and intimidatory, and therefore violative of Section 8(a) (1) of the Act.

mention union to me, because I have no knowledge of any kind of union whatsoever."

According to Gribbins' testimony, Hord advised her on or about June 19, that she was to be transferred to the Levittown store. When she asked why she was being transferred, Hord replied, "you're just being transferred, don't ask any questions about it." She accused Hord of trying to make her quit and stated "why don't you save yourself the trouble and just fire me-but make sure that you put down the appropriate reasons on the card." When he asked what the appropriate reasons were, she replied "you know darn well it is because of the Union." When Hord claimed he knew nothing about the Union, she inquired how he could have three persons be discharged from his department without asking any questions about it. Hord promised her an assistant manager's job and an increase in salary if she went to the Levittown store, but she told him that she still did not want the job there. However, Hord stated, regretfully, that he had to do it and that Igloi would bring her to the store and carry her home because she did not have transportation. 35

Gribbins commenced working in the Levittown store on June 20. According to her testimony, Igloi instructed that she was not to do any of the windows and that she was to make "plans for props" which was a job she had not done in the Massapequa store. 36 On or about June 28, Gribbins advised the Levittown store manager, Kreiner, that she had a transportation problem and that Hord had told her that Igloi

³⁵ To the extent that their versions of the June 19 conversation differ, I credit Gribbins. I find that the promise of benefits for the purpose of removing Gribbins from being an active participant in union activities to be interference and coercion with employees' Section 7 rights and therefore violative of Section 8(a) (1) of the Act.

³⁶ Window displays were a major part of her job at the Massapequa store.

would be transporting her to and from work, but that was not taking place. The following day Kreiner called Igloi and Gribbins into his office and the latter explained that she did not have transportation to the Levittown store and that she had been promised a raise and a promotion to assistant manager's position, neither which had been given. Both men were surprised and Kreiner said that he would have some of his employees bring her to and from work, but their hours did not jibe with her hours. When she said that she could not afford a \$25 a week taxi fare, Kreiner replied that she should not expect to get an increase of \$25. Kreiner said that he would get in touch with Vice President Katz concerning the matter, and he told Gribbins a few minutes later that he (Kreiner) had spoken with Katz, the result of which was that Gribbins had been transferred back to the Massapequa store. 37

Gribbins returned to work at her regular job in the Massapequa store on July 2. Later that month, around July 14, she went on vacation. On July 23, she testified on behalf of the Union at the NLRB hearing in the representation case (29-RC-2287). 38

The events which lead up to Gibbins' discharge on August 21, commenced the preceding day, August 20. However, a few words concerning her work habits and procedures in dressing

³⁷ The foregoing findings are based upon the uncontradicted testimony of Gribbins, neither Kreiner nor Igloi having been called as witnesses by the Respondent. No statement of unavailability of either person was made on the record. Katz testified that he was aware that Gribbins had been assigned to Levittown in the latter part of June, and that such assignment had come to an end because Kreiner had called him and said that Gribbins had practically finished her work, that he (Kreiner) would complete it himself. he wanted to "get her out of his hair."

³⁸ Prior to that time, Gribbins attended two union meetings after work at Madden's Pub in Massapequa on June 14 and June 21.

a window in the Respondent's store might be helpful in understanding the issue presented. Thus, as previously noted, it was one of Gribbins' principal functions to dress the Respondent's windows. In performing such function, she would, in the first instance, plan what type of display would be appropriate and arrange for the necessary props. Having done this, she would decide what apparel or other material would be appropriate to place upon the props or mannequins in the window. The choice of apparel would necessitate removing garments from various departments in the store, and since it was practically impossible to know in advance which colors and combinations of garments would be pleasing to the customer, Gribbins would select several such garments in various combinations in order to choose the "right" one after viewing it in the window. Thus, in dressing a window, it is apparent that she would take from any given department more apparel than was ultimately required, and return that which was not utilized in dressing the window.

Respondent, in an apparent effort to keep tab of its inventory, maintained in each department of the store (which contained some 72 departments) what was called a "display book." The purpose of such book was to keep a record of items which were taken from such departments. Respondent asserts that it maintained a rule which existed at least since December 4, 1972, to the following effect:

Any merchandise taken out of a department by the display department for interior or window displays, *must* be given to the department manager first and signed for in a book. Upon return of said merchandise the item(s) will be checked off as a return to department by the manager.

Failure to follow the above may be cause for dismissal.39

³⁹ Respondent's Exhibit No. 2.

The foregoing notice was sent as an interoffice communication addressed to: "All store managers, display managers, security managers from S. Katz." Although Respondent proffered some evidence which tended to show that the foregoing rule was made known to the affected personnel, Gribbins testified that it was her practice since she started working at the Company to record in the display book only that merchandise which was chosen for display; the other merchandise was put back in the department with no mention of that made in the book. Inasmuch as there is no evidence prior to August 20 that Gribbins was in any way warned or disciplined for failure to adhere to the requirements of the above-stated rule. I am inclined to believe that the rule was honored more in the breach than in the observance. This finding is further confirmed by the admission of Display Manager Manzi that following Gribbins' discharge, a notice was posted to the effect that employees should sign for display materials even when they are not used.

Coming now to the events of August 20, Margaret Rousseau, one of Respondent's plainclothes, in-store detectives testified that on that morning she was in the millinery department when she noticed Gribbins in the blouse department pick up two bodysuits: a maroon one and a green one, and walk out of the department with them. 40 Rousseau checked the display book in the blouse department to see if it was signed but there was no signature for that merchandise. She testified that she intended to report the violation later on since it was not that important at the time. She then proceeded to the back stock areas, which are those places behind the windows where various props, mannequins and other

⁴⁰ The blouse department is located adjacent to the millinery department. A bodysuit is similar to a blouse, but fits around the torso like a one-piece bathing suit.

materials are kept which are utilized in window displays. Rousseau noticed that the blouses that Gribbins had brought into the backroom were hanging up along with a burgundy polka dot pants suit which was a size 7 and sold for \$21.99.41

Rousseau then went to lunch and upon her return noticed that neither the bodysuits nor the pants suit was on display in the window. She decided to check the back stock area again and, at the time, observed the two bodysuits there but the pants suit was missing. There was a pile of debris on the floor, and the price ticket from the pants suit was also on the floor. She picked up the ticket and telephoned her boss, Marie Eckert, who instructed her to come down to the store detectives' office and relate the story. On the way down, Rousseau noticed Gribbins with another green bodysuit walking into the back stock area. After she came out, Rousseau went in and observed that now there were three bodysuits hanging in that area. Rousseau also noticed that the debris had been swept up and cleaned out. She then, again, checked the display book in the blouse department to see whether the bodysuit had been signed for, but there was no entry made. She then went to her office and told Marie Eckert the situation and showed her the ticket that had been picked up from the floor. Eckert called Store Manager Kaye, who came downstairs along with Vice President Katz, who was in the building that day. Katz called Charles Hord and told him that Gribbins was not signing for merchandise in the blouse department. He also called Lucille Tedeschi, the second floor manager, and had her bring down a pants suit which corresponded to the style number on the ticket which Rousseau had picked up. Finally, Kaye instructed Eckert and Rousseau to check the display book in each department to see if they had been signed.

⁴¹ Rousseau testified that she noticed the price because it was pretty and she "wanted to see how much it cost because [she] liked it."

Shortly thereafter, there was a report by another store detective that Gribbins had been seen on the selling floor with her handbag, which was against store rules. Eckert requested Gribbins to open her handbag so that it could be checked. Gribbins complied, and among other things in the handbag was a green bodysuit in a clear plastic bag. Gribbins then was taken to Kaye's office by Eckert and Rousseau and asked to explain the circumstances. Gribbins stated that she had purchased the bodysuit from the Company about a week previously, and had brought it to work because she wanted to wear it following working hours that evening. Kay inquired whether Gribbins purchased the garment under the employee discount plan, and Gribbins replied that she never took a discount. 42 At the conclusion of the meeting, a written warning was issued to Gribbins respecting her failure to sign the display book and for carrying a purse on the selling floor during working hours. 43

Gribbins testified that on August 20, she had been changing the Unqua Road window and finished about lunchtime. After lunch she proceeded to return the unused merchandise to the respective departments and returned three pants outfits to the junior impressions department. Since there was no saleslady present, she placed the three pants suits back on the rack. She had not returned a polka dot halter and returned this to a saleslady and explained that it belonged to two other pieces in that department. When she returned merchandise in the

^{. &}lt;sup>42</sup> Employees are allowed to purchase merchandise from May's at a discount of 10 percent of the purchase price. However, it is necessary for the employee who purchases merchandise under that procedure to take it to a check desk and make out a slip for the purchase. She then later receives the discount in a payroll check.

Respondent proffered no evidence in refutation of Gribbins' assertion that she never utilized this procedure.

⁴³ Respondent's Exhibit No. 3.

ladies' sportswear department, one of the salesladies told her that Katz was calling for the display book. This upset Gribbins because he had never asked for the display book before, and she called Charles Hord over the phone and asked why Katz was asking for the display book. Hord responded that he did not know but would find out the reason. A few minutes later. Hord came to Gribbins and asked her if she would show him the pants outfits that she had returned, and also inquired whether anyone had seen her return them to the rack. She said that she did not know but perhaps a sales girl named Veronica (Turner) did. According to Gribbins' testimony, Veronica first said that she observed Gribbins return the merchandise but then changed her story to say that all that Gribbins had given her was a halter. Hord directed Gribbins to return to work. She intended to go outside the building for a break, and that was the reason for carrying her purse inadvertently on the selling floor. There she was stopped by Eckert.

Following the meeting in Kaye's office, above-described, Gribbins had a coffee break with display manager Manzi, and brought to his attention that she had been accused of having stolen merchandise in her personal handbag. Manzi testified that he was surprised to hear that something like that had happened to Gribbins, since he had never found Gribbins to be dishonest in all the years he worked with her.⁴⁴

Later in the afternoon of August 20, store detective Rousseau, not being satisfied with Gribbins' explanation of what happened to the burgundy pants suit, continued (along with Marie Eckert) the search for said pants suit. A short while later, they found the suit along with a string of beads and a bottle of perfume under a box in the back stock area.

⁴⁴ No other employee or management representative testified of any prior incident involving a suspicion of dishonesty on Gribbins' part.

The merchandise was in a plastic bag similar to the one in which Gribbins had the bodysuit. Eckert called Kaye; the latter came down and observed the merchandise and removed it to his office.

The following morning, Kaye called Gribbins into his office and asked her if she could explain the merchandise. Gribbins claimed that the burgundy pants outfit was not the one she had taken to the window because she had used a size 5, and the one he showed her was a size 7. Marie Eckert, who was present during the interview, asked Gribbins why she did not return the necklace to the jewelry department, and Gribbins replied she never seen that particular necklace before—that the white necklace she used was still in the window. She further explained that, as far as the perfume was concerned she had an understanding with the cosmetics department that she could keep that bottle of perfume in the display area because sun tends to spoil perfume and therefore a new bottle should not be used on each occasion. Kay then called for Veronica (Turner), the saleslady, and asked her if she had received the three pants outfits from Gribbins. Turner said no, to which Gribbins responded that she (Gribbins) never claimed she had returned the pants outfits to Turner. Gribbins at that point became angry and accused Kaye of planting the merchandise, and he dismissed her. Kaye terminated Gribbins at that point because of "unsatisfactory explanation of merchandise, and violation of Company rules, carrying her bag on the floor." He did not accuse Gribbins of theft.

Analysis and Concluding Findings as to Laura Gribbins

After a consideration of all the evidence in the record, including that which reflects Respondent's hostility to the union

campaign and to those employees who evidenced sympathy toward the Union, I am convinced and therefore find that the assignment of Gribbins to the Levittown store in June and the subsequent discharge on August 21, was discriminatorily motivated and therefore violative of Section 8(a)(3) of the Act.

That Respondent was suspicious of Gribbins' sympathies for the Union is reflected, in the first instance, by the conversation between her and Hord on or about June 11 or 12. It will be recalled that in that conversation Hord interrogated her concerning her conversation with Brandt and warned her against further association with union advocates. Although she denied that her conversation with Brandt concerned the Union, the evidence shows that on June 14, she attended her first union meeting at Madden's Pub and that Brandt picked her up after working hours in his car outside of the May's parking lot. The first part of the following week she was abruptly advised that she was to be assigned or transferred to the Levittown store although Respondent knew from previous experience that she strongly objected to any such assignment or transfer because of transportation difficulties. She states that Hord refused to tell her why she was being transferred, and I have credited that testimony. However, even if Hord's testimony (that Igloi requested her) is believed, the facts do not substantiate his claim since, after she reported for work in Levittown, she was assigned to perform work which she ordinarily did not perform in the Massapequa store. Furthermore, Igloi did not follow through with respect to providing Gribbins with transportation, as Hord had promised Gribbins he would do. Finally, she did not receive any consideration as respects an assistant manager's position in display, as Hord had indicated to her; indeed, both Igloi and Kreiner were surprised that this had been said to her. Neither Kreiner nor Igloi

ever explained why Gribbins had been transferred or assigned to the Levittown store in the first place, and such assignment was abruptly terminated after she had worked there only 5 or 6 days.

Although there is no direct evidence of Respondent's knowledge of Gribbins' union activities prior to June 20, it is well established that "direct evidence is not necessary to support a finding of knowledge but that such knowledge may be inferred by the Board from the record as a whole." In my judgment, the facts above stated, considered in the context of the whole record, warrant the inference of Company knowledge of Gribbins' union activities. 46

There is, of course, direct evidence of Respondent's knowledge of Gribbins' union activities in July when she testified on behalf of the Union at the NLRB hearing in the representation case.

I am convinced that Respondent, having been unsuccessful in its attempt to cause Gribbins to quit her employment as a consequence of the Levittown assignment, commenced seeking alternative methods of harassment following her return from vacation in August. Inasmuch as Gribbins was considered by her immediate supervisors to be an exemplary em-

⁴⁵ Texas Industries, Inc., 156 NLRB 423, 424; see also F. W. Woolworth Co. v. N. L. R, B., 121 F. 2d 658, 660 (C. A. 2).

⁴⁶ In addition to all the evidence above cited, the record reflects, through the testimony of Gribbins and former employee Evelyn Upton, that commencing in about April, they noticed Respondent's store detectives following them. It was not, of course, until early June that Gribbins signed a union card. The store detectives denied that they had been instructed to spy upon the union activities of the employees. However, I am inclined to believe, based upon the evidence of Respondent's extreme hostility toward the Union, that after an employee became identified as a union proponent, the store detectives were instructed by Respondent's higher level supervision to keep a close lookout on those employees' activities.

ployee it is evident that they were neither apprised nor consulted respecting any such decision which I find to have been made by Respondent's agents at the higher levels.

Skepticism is first aroused by the conduct of Rousseau on the morning of August 20. It will be recalled that she observed Gribbins walking out of the blouse department with two bodysuits without signing the display book, and that this aroused her suspicion. But Gribbins, by her own testimony, had been engaged in this very same conduct during her entire period of employment which extended over 4 years. Under these circumstances, one wonders why it abruptly aroused the suspicion of a store detective on this particular occasion. 47 In any event, this conduct resulted in a written reprimand being given to Gribbins that day for failure to sign the display book and for carrying her purse on the selling floor contrary to Company rules. It is evident, however, that this conduct was not sufficient to warrant termination since, as I have found, the first rule (if it existed as interpreted by the Respondent) was not enforced, and the second rule was breached only because Gribbins felt unjustly accused of engaging in wrongful conduct.

That Gribbins alleged wrongful conduct did not warrant termination under Respondent's policy is further confirmed by the explanation of the operation of such policy as testified to by Respondent's agent, Martin Zinkofsky:

Q. You described a practice as to warnings and writeups.

⁴⁷ Such conduct tends to confirm my view, earlier expressed, that the store detectives were instructed to watch the activities of employees who were union activists. Accordingly, I find the above conduct of Rousseau (and of the other store detectives on August 20) to constitute illegal surveillance of union activities, in violation of Section 8(a) (1) of the Act.

Can you explain now what the normal practice is when an employee is engaged in wrongdoing once, twice, three times? A. Well, if we catch him doing something, we warn him once. If it happens again, we usually write him up and make sure that they sign the reprimand and put it in to their folder.

We tell them that we don appen again, you know, which would lead to pro

- Q. And then what happens if it's done a third time?

 A. Then I refer him to the store manager and let him make a decision on what he wants to do.
- Q. Prior to June of 1973, do you remember any instances or do you know of any instances where a person was fired—strike that.

Do you know of any instance prior to June of 1973 where a person was written up the first time he was warned? A. Not to my knowledge.

I don't recall.

Q. And prior to June of 1973, do you have any knowledge of any employee being fired after only one warning? A. I don't recall.

Later in the day the store detectives "found" the missing burgundy pants suit along with a necklace and bottle of perfume, and reported this to store Manager Kaye. The latter quickly concluded Gribbins' culpability and called Vice President Katz at his home that evening. Katz confirmed that "this girl should be terminated in view of all the things that had occurred." Thereafter, Kaye, after checking with Company counsel, called Gribbins into his office the following morning and confronted her with the merchandise. She denied that the bodysuit was the one she had handled as it was

⁴⁸ Testimony of Kaye.

a different size; she claimed that the necklace she obtained from the jewelry department was still on the mannequin, and that the perfume had not been returned because of an agreement she had with the cosmetics department. There was, concededly, a dispute concerning the identity of the pants suit. But without even checking with the jewelry and cosmetics departments (which would have taken only a few minutes), Kaye refused to accept Gribbins' explanations and terminated her.

Additional failures by Respondent to investigate the incident may be summarized as follows: (1) The failure of Kaye to consult with Gribbins' immediate supervisor concerning the circumstances of the alleged pilferage, much less request a recommendation as to whether Gribbins should be terminated therefor. It is well established that such conduct evidences a discriminatory intent. 49 (2) The failure of Kaye to direct the store detectives to at least interview any other employees of the display department, including display manager Manzi, respecting their whereabouts and conduct the previous day; (3) the failure of Kaye to call John Malloy, the security director for all the Respondent's stores, in connection with this matter. Malloy testified that it was normal procedure for him to be called by the store detectives if an employee is under suspicion, and this has occurred even if he is off duty. He further testified that on numerous occasions Mr. Kaye had asked him to conduct such an investigation. However, in the instant case, Malloy did not know anything about Gribbins' termination until several days later. Such failure to conduct a fair investigation has been held to constitute evidence of a discriminatory intent.50

⁴⁹ See, e.g., Berdix-Westinghouse Automotive Air Brake Co., 161 NLRB 789, 798; Marsh Supermarkets, Inc., 140 NLRB 899, 913; Kingsford Motor Car Co., 135 NLRB 711, 726.

⁵⁰ See Rockingham Sleepwear, Inc., 188 NLRB 698, 702, and cases cited therein.

In addition to all of the foregoing, I have given weight to testimony of former employee Evelyn Upton, who impressed me as a candid and honest witness. She stated that on the day of Gribbins' discharge she had a conversation with Captain John Maquire, chief of Respondent's security guards, who told her that he felt that Gribbins "should have quit before she was fired because if they want to get you, they will, even if it means planting something on you to get it." He further opined that he knew she (Gribbins) was going to get fired because of activity in the Union."

Accordingly, based upon all the above recited evidence, I find and conclude that the termination of Gribbins on August 21, was to discourage union membership in violation of Section 8(a)(3) of the Act. Since it is a reasonable inference that such termination was also in retaliation for her testifying at an NLRB hearing, I find that, in addition, such termination violated Section 8(a)(4) of the Act.

F. Additional Alleged Violations of Section 8(a)(1)

In the course of discussion of the foregoing alleged violations of Section 8(a)(3) of the Act, I have made several findings that some of the Respondent's agents and supervisors made certain remarks to employees which interfered with, restrained and coerced them in the exercise of their rights under Section 7 of the Act, in violation of Section 8(a)(1) of the Act. The following, additional findings of violation are warranted in the light of competent and credible evidence adduced by the General Counsel at the hearing:

1. About 2 weeks after employee Frank Coletto signed a union card (on or about June 7), supervisor Paul DeRonde

asked him if he had signed a card. When Coletto answered affirmatively, DeRonde advised that Coletto could be trouble because of such conduct. In another conversation between the two men which occurred a couple of weeks later, DeRonde advised that if he had to pay a certain salary as a result of the Union coming in, he would get specialized, qualified individuals as electricians, air conditioning men, etc., implying that less qualified employees such as Coletto would be terminated.

- 2. Employee John Cannon testified that some time during the month of April, there was a meeting of the employees under the supervision of Paul DeRonde in which the subject of the position of assistant chief engineer was raised. DeRonde told them that this position would not be filled "until they [Respondent] decided what would be done about the Union." I find this statement to constitute a threat of unlawful withholding of benefits because of the union activities of the employees.
- 3. In late June, employee Christopher Lynch had a conversation with supervisor Harry Schob in which the latter advised tha someone had seen Lynch talking to employee John Cannon about the Union on one of the elevators. Schob brought a piece of paper and directed Lynch to write what he and Cannon were talking about. Lynch did as directed and wrote that he and Cannon were talking about the Union and how a union benefits employees. Schob took the paper and left but later returned and said that Mr. Kaye didn't like the way it was done because Lynch had spelled Cannon with a "G" instead of a "C." Schob also directed that Lynch include a statement to the effect that at no time did Cannon ask him to join a union. When Lynch asked Schob what would happen if Lynch refused to write the statement. Schob responded, "It

could be your job or his (Cannon's)." Accordingly, Lynch wrote the statement as directed (See General Counsel's Exhibit No. 14). I find the foregoing conduct to constitute coercive interrogation respecting employees' union activities; to create an impression of surveillance of employees' union activities; and a threat of retaliation for refusing to accede to the demand to divulge information concerning protected activity.

To the extent that counsel for the General Counsel has urged me to make additional findings of independent violation of Section 8(a)(1) of the Act, I decline to do so based upon either of the following reasons: (1) The evidence does not come within the specifications of the Bill of Particulars furnished by General Counsel to Respondent prior to the hearing; (2) the particular statement of the supervisor constitutes an expression of opinion or prediction protected by Section 8(c) of the Act, rather than a threat of retaliation or retribution for engaging in union activities; or (3) lack of substantial evidence to support the allegation because the witness failed to testify with that degree of clarity and directness required to prove the statement or conduct, or qualified the alleged statement in such a manner as to render it noncoercive; (4) finally, it should be noted that I have found that competent, credible evidence has sustained the Section 8(a)(1) allegations of the complaint in at least one instance, so that any further findings would only be cumulative and repetitive, and would not expand the scope of the Order herein recommended.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the Respondent's

operations described in section I, above, have a close, intimate and substantial relationship to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that Respondent committed certain unfair labor practices, it must be ordered to cease and desist from engaging further in such conduct and to take remedial action designed to effectuate the policies of the Act.

It having been found that Respondent unlawfully discriminated against its employees by discharging them, it must be ordered to reinstate them and make them whole for any loss of earnings they may have suffered in consequence of the unlawful discrimination in the manner prescribed by the Board in F. W. Woolworth Company, 90 NLRB 289, and Isis Plumbing & Heating Company, 138 NLRB 716.

Respondent's unfair labor practices indicate a general attitude of opposition to the purposes of the Act. Accordingly, a broad cease and desist order is necessary and appropriate to effectuate the policies of the Act.

Upon the foregoing findings of fact, and upon the entire record in the case, I make the following:

Corclusions of Law

- 1. J. W. Mays, Inc., Respondent herein, is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
- 2. Local 30 and Local 307, and each of them, are labor organizations within the meaning of Section 2(5) of the Act.

- 3. By discriminating against Michael Brandt and Laura Gribbins, the Respondent has engaged in conduct to discourage membership in the Union in violation of Section 8(a)(3) and (1) of the Act. Such discrimination resulted as a consequence of the employees' giving of testimony under the Act, and therefore in violation of Section 8(a)(4) thereof.
- 4. By the foregoing conduct, by coercively interrogating employees concerning their union activities, by threatening reprisals for engaging in union activities, by promising benefits in return for ceasing engaging in union activities, by directing and warning employees to refrain from engaging in union activities, by creating an impression of surveillance of union activities, and by surveillance of such activities, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.
- 5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:⁵¹

ORDER

J. W. Mays, Inc., its officers, agents, successors, and assigns, shall:

⁵¹ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

- (a) Discharging or otherwise discriminating against its employees because of their union membership and activities, or because they gave testimony under the Act.
- (b) Coercively interrogating employees concerning their union activities, threatening reprisals for joining the Union or engaging in union activities, promising benefits in return for refraining from engaging in union activities, directing and warning employees to refrain from engaging in union activities, surveillance of union activities, or creating an impression of surveillance of employees' union activities, or in any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.
- 2. Take the following affirmative action which is necessary to effectuate the policies of the Act:
- (a) Offer to Michael Brandt and Laura Gribbins, and each of them, immediate, full and unconditional reinstatement to his (or her) former or substantially equivalent position without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay which they may have suffered as a result of the discrimination against them in the manner set forth in that portion of this Decision entitled "The Remedy."
- (b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to

analyze the amount of backpay due and ascertain reinstatement under the terms of this Order.

- (c) Post at its Massapequa, New York, store, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.
- (d) Notify said Regional Director, in writing, within 20 days from the receipt of this decision, what steps have been taken to comply herewith.

It is further recommended that the allegations of the consolidated complaint be dismissed in all respects other than those found to have been sustained in the above findings and conclusions.

Dated at Washington, D. C. March 29, 1974. ROBERT COHN, Administrative Law Judge.

⁵² In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Appendix attached to Decision.

APPENDIX.

NOTICE TO EMPLOYEES.

Posted by Order of the National Labor Relations Board An Agency of the United States Government

After a trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we have violated the law and had ordered us to post this notice, and we intend to carry out the order of the board, and abide by the following:

WE WILL NOT discharge or otherwise discriminate against our employees because of their union activities or sympathies.

WE WILL NOT discriminate against employees for testifying under the National Labor Relations Act, as amended.

WE WILL NOT threaten our employees with reprisals if they join the Union or otherwise engage in union activities.

WE WILL NOT promise our employees benefits if they refrain from joining a union or engaging in union activities.

WE WILL NOT direct or warn our employees to refrain from engaging in activities on behalf of a union.

WE WILL NOT engage in surveillance of our employees' union activities.

WE WILL NOT create an impression of surveillance of our employees union activities.

Appendix attached to Decision.

WE WILL NOT in any manner interfere with, restrain or coerce our employees in the exercise of their rights to self-organization, to form, join, or otherwise assist any labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL offer Michael Brandt and Laura Gribbins immediate and full restatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole, with interest, for any loss of pay which they may have suffered as a result of the discrimination against them.

J. W. MAY'S, INC., (Employer).

Dated	 By		
Dated		(Representative)	(Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street—4th Floor, Brooklyn, New York 11241 (Tel. No. 212-596-3535).

FKP D—9036 Massapequa, N. Y.

UNITED STATES OF AMERICA Before the National Labor Relations Board

J. W. MAYS, INC.,

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,

Case 29-CA-3441.

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, AND LOCAL 307, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO.

Case 29-CA-3458.

and

LAURA GRIBBINS.

Case 29-CA-3519.

On March 29, 1974, Administrative Law Judge Robert Cohn issued the attached Decision in this proceeding.

Thereafter, the General Counsel filed exceptions and a brief in support of both the exceptions and Decision. Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge to the extent consistent herewith, and to adopt his recommended Order as modified herein.

We do not agree with the Administrative Law Judge that the General Counsel met his burden of proving that the transfer and subsequent discharge of employee Laura Gribbins, an artist employed in the display department, was discriminatorily motivated. It is well established that suspicion cannot substitute for the requisite proof of unlawful motivation. We will briefly set out the relevant facts surrounding the alleged transfer and the discharge.

Gribbins, hired in 1969, has since 1971 been performing various display jobs, among which was boutique trimming at three of Respondent's stores: the Massapequa store, where she is regularly assigned, and the Woodmere and Levittown stores. In February 1972 Respondent, on Display Director Hord's recommendation, formally assigned Gribbins to handle all boutique trimming in each of the three stores she was previously working in. Although considering this a promotion for Gribbins and giving her a raise, Respondent felt that it merely made "official" her previous assignment to these duties. Within a few weeks, Gribbins began to complain about the transportation problems she was having while traveling to

the Woodmere and Levittown stores. Respondent's efforts to solve this problem by providing transportation whenever possible were futile and its vice president of operations, Katz, finally agreed to limit her travel by dropping Woodmere from her duties. Gribbins asked Hord to be taken off the Levittown job also, but was also told to continue because she "was paid to do so." Since March 1972, Gribbins had worked primarily in the Massapequa store, making only occasional trips to Levittown. She worked for short periods at Levittown in January, February, and early June, 1973. On June 19, 1973, Display Director Hord asked her to work there for 2 weeks. His request was prompted by a call from the Levittown display manager who at the time was under great pressure to complete certain displays. Gribbins refused the assignment at first and, when Hord insisted, she accused him of trying to interfere with her union activities. Hord, claiming "no knowledge of any kind of union, whatsoever," instructed her to work at Levittown and she complied.

Katz testified that in late June he received a call from the Levittown store manager, who said that he would complete Gribbons' unfinished work himself, that she was wandering around the store not doing her job, and he wanted her "out of his hair, he had enough of her." Katz agreed to have her return to Massapequa and at that time, she had only worked 4 or 5 days at Levittown.

On August 20, 1973, Gribbins was observed by store detectives at Massapequa to be taking merchandise without making the proper entry in the department's display book. She was questioned about her failure to sign for all merchandise. It was Gribbins' practice to sign only for items she eventually used in the window displays. Several witnesses testified this was in violation of a longstanding company rule, the policy being to sign for all items taken for display purposes and then

to draw a line through entries made for unused items. It is undisputed that later that same day Gribbins violated another rule by carrying her purse in the store. When the purse was searched, a body suit similar to that used by her in her display work earlier that day was found wrapped in a plastic bag. Gribbins' explanation was that she purchased the item a few days earlier, had destroyed the receipt, and, because she did not take the 10-percent employee discount, no record of the purchase existed. Respondent gave Gribbins a written warning for these infractions of company rules, which she signed. Still later that day, store detectives discovered a box in the display area used for props such as styrofoam pebbles and artificial leaves. Inside the box were a necklace, a bottle of perfume, and a burgundy pants suit wrapped in a plastic bag similar to the one containing the body suit found earlier in the day in Gribbins' handbag. The usual store tags had been removed from the pants suit and it was identical to one hung in the display area earlier that day by Gribbins. Questioned the following day, Gribbins was unable to explain the presence of the pants suit and necklace and, asserting that she had returned the pants suit she used in her window decorating work, accused the company of "planting" the suit in an effort to fabricate a cause for her dismissal. Store Manager Kaye dismissed Gribbins for failure to adequately explain the presence of the merchandise and for violation of company rules.

The Administrative Law Judge found that the evidence supports the conclusion that Respondent, in effect, engaged in a scheme involving store executives, supervisors, and security personnel, the object of which was to discourage Gribbins' union adherence by first transferring her and, having failed to achieve the desired result, by subsequently discharging her.

We do not believe the circumstances of this case substantiate such a theory. The Administrative Law Judge found that on June 19, 1973, Gribbins was "abruptly assigned or transferred" to the Levittown store. The facts indicate differently. Gribbins admitted that in early 1972, a full year before the Union started organizing, she had reached an understanding with Respondent that she would assume certain display duties in its three stores and for that she was given a raise in pay and promoted. Although she was no longer required to work at the Woodmere store, it is quite clear that her responsibilities at Levittown remained. In our view her continued assignment there from time to time was part of her duties-something she had done for more than a year and could expect to do in the future. As recently as early June 1973, just a few days before Hord gave her this assignment which he testified would last about 2 weeks, she had worked in Levittown.

Unlike the Administrative Law Judge, we are not pursuzded that discriminatory intent is evidenced by the fact that transportation to Levittown for Gribbins was a problem or that her assigned duties in late June were not the customary ones. The evidence is clear that Gribbins had been facing transit problems on past assignments. Respondent did attempt to solve her problem by arranging a ride from her home to the Levittown store, and bus service was available to her. Although her duties at Levittown in June 1973 were not customary for her, they did involve related work in the display department and there is no evidence that the work was particularly burdensome or that she was incapable of performing it. Yet the record does indicate that at the time of her temporary assignment, the Levittown display department needed her help; that she was assigned, as in the past, only as needed; and that she returned and reassumed her regular

duties at Massapequa, and soon thereafter, despite the Levittown store manager's report, received a wage increase, all of which in our view indicates a lack of discriminatory intent with respect to this transfer.

Several weeks later Gribbins was discharged and the Administrative Law Judge found unlawful motivation. At that time Gribbins was 1 among 30 employees in the unit requested in the second representation petition and, much like other employees, she supported the union campaign but was hardly an active participant. As in the case of her transfer, we think it unlikely that the Respondent would devise a plot singling out this trusted employee of over 4 years, highly regarded by her supervisors at Massapequa, and rewarded by several substantial wage increases.

Unlike the Administrative Law Judge, we find significant the evidence that directives to managerial and security personnel concerning the sign-out procedures were made known to affected employees like Gribbins, and also that managers were reminded from time to time to advise employees. In addition, we view this as consistent with Respondent's overall security procedures governing separate employee entrances and special package rules. In this context it is not reasonable to conclude that Gribbins and other display employees signed only for articles actually displayed with company acquiescence. We note that display employee Warwel, though available as a witness, was not called to confirm Gribbins' testimony that he likewise signed only for merchandise used in display.

We find merit in Respondent's contention that its previous year's stock shrinkage, totaling \$3,800,000, required a stern effort to curb such losses, that four other employees were discharged in August 1973 for security reasons, and that it

was therefore justified in its termination of Gribbins for violating company rules designed to protect its merchandise; and for her inability to explain to Respondent's satisfaction the presence of merchandise secreted in the display work area.

In our view the General Counsel failed to prove unlawful motivation in this transfer and discharge, and we shall dismiss the 8(a) (3) and (4) charges pertaining to Gribbins.²

ORDER.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Respondent, J. W. Mays, Inc., Massapequa, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Administrative Law Judge's recommended Order, as so modified:³

¹ For these same reasons we disagree with the Administrative Law Judge's finding in fn. 47 of his Decision that the August 20 behavior of the store detectives with respect to Gribbins constituted illegal surveillance of her union activities. Member Fanning does not agree and would adopt the finding of illegal surveillance.

² Member Fanning would adopt the Administrative Law Judge's findings and conclusions that display employee Gribbins was discriminatorily discharged, but would add, as a further basis for the 8(a) (4) finding, the charge filed on June 28, 1973, alleging that she was discriminatorily transferred.

³ The Respondent has excepted to the Administrative Law Judge's broad order as being unwarranted. We disagree. This case involves extensive violations of the Act, making such an order appropriate. *American National Stores, Inc.*, 195 NLRB 127 (1972), and *N. L. R. B. v. Entwistle Mfg.*, Co., 120 F.2d. 532, 536 (C. A. 4, 1941).

Member Kennedy would not find the 8(a) (4) violation as to Brandt. See *Mueller Brass Co.*, 208 NLRB No. 76 (1974), fn. 2.

Appendix attached to Decision and Order.

- 1. Delete "surveillance of union activities," from paragraph 1(b).
- 2. Delete the name of Laura Gribbins from paragraph 2(a).
- 3. Substitute the attached notice for that of the Administrative Law Judge.

Dated, Washington, D. C. Sep 27 1974.

JOHN H. FANNING, Member.

RALPH E. KENNEDY, Member.

(Seal)

JOHN A. PENELLO, Member.
NATIONAL LABOR RELATIONS
BOARD.

APPENDIX.

NOTICE TO EMPLOYEES.

Posted by Order of the National Labor Relations Board An Agency of the United States Government

After a trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board

Appendix attached to Decision and Order.

has found that we have violated the law and has ordered us to post this notice, and we intend to carry out the order of the Board, and abide by the following:

WE WILL NOT coercively interrogate our employees concerning their membership in, activities on behalf of, or sympathy for Local Union No. 30, International Union of Operating Engineers, AFL-CIO, and Local 307, Service Employees International Union, AFL-CIO.

WE WILL NOT discharge or otherwise discriminate against our employees because of their union activities or sympathies.

WE WILL NOT discriminate against employees for testifying under the National Labor Relations Act, as amended.

WE WILL NOT threaten our employees with reprisals if they join the Union or otherwise engage in union activities.

WE WILL NOT promise our employees benefits if they refrain from joining a union or engaging in union activities.

WE WILL NOT direc, or warn our employees to refrain from engaging in activities on behalf of a union.

WE WILL NOT create an impression of surveillance of our employees' union activities.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or otherwise assist Local Union No. 30, International Union of Operating Engineers, AFL-CIO, and Local 307, Service Employees International Union, AFL-CIO, or any other labor

Appendix attached to Decision and Order.

organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL offer Michael Brandt immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole, with interest, for any loss of pay which he may have suffered as a result of the discrimination against him.

J. W. MAYS, INC.,

(Employer).

Dated	 	Ву													
						se								tle	

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212-596-3535.

General Counsel's Exhibit 1(a).

R	M	N	L	R	5	0

Form Approved Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST E	MPLOYER	
STRUCTIONS: File an original and 4 copies of this charge with NL gional director for the region in which the alleged unfair labor practi coursed or is occurring	.RB Case No.	7-(19-73
1. EMPLOYER AGAINST WHOM		IT
, Name of Employer May's Department Store	b. Number	r of Workers Employed
Address of Establishment (Street and number, city, State,	d. Employer Represe	
and ZIP code) Sunrise Highway and Unqua Road Massapequa, LI		516 541-7700
Type of Establishment (Factory, mine, wholesaler, etc.)	g. Identify Principal	
HEXXX Dep't Store	Retail Product	
The above-named employer has engaged in and is engaging in unfair subsections (1) and (3) (List subsections) and these unfair labor practices are unfair labor practices affecting		the National Labor Relations Act,
Basis of the Charge (Be specific as to facts, names, addresses, pla		
employer terminated the employment of Michael Brandt because of their act: International Union of Operating Eng	ivities on behal	to, Paul Dashefsky and If of Local 30
the above and other acts, the above-named employer has interfered wrights guaranteed in Section 7 of the Act.		
Full Name of Party Filing Charge (If labor organization, give full n	ame, including local n	ame and number)
Local Union No. 30 International Uni	ion of Operating	Engineers, AFL-CIO
Address (Street and number, city, State, and ZIP code)		4b. Telephone No.
817 Broadway New York, N.Y.		777-3200
Full Name of National or International Labor Organization of Which when charge is filed by a labor organization)	It Is an Affiliate or Go	
•		
6. DECLARAT		
column that I have read the above charge and that the statements there		of my knowledge and belief.
10/4/015	ctorney	
By / Chit / C/ Dracky	The same of the sa	(anw)
10/4/015	(Title, i	(any)
By (Signature of reprenative or person) filing charge) 1. Park Place Address New York, New York 227-224	Title, i	6/19/73 (Date)

ONLY COPY AVAILABLE

General Counsel's I	Exhibit 1	l(c).	
FORM NLRB-301 (2-67)		Form Appro Budget Bure	ved eau Ne. 64-R001.12
UNITED STATES OF		_	
NATIONAL LABOR RELI CHARGE AGAINST			
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INSTRUCTIONS: File an original and 4 copies of this charge with !	LRB	DO NOT WRITE IN	THIS SPACE
regional director for the region in which the alleged unfair labor prac		29-661-	3458
occurred or is occurring		Date Filed	28=73
a. Name of Employer	CHARGE	b. Number of Workers Em	played
C. Address of Establishment (Street and number, city, State,		1 000	
Sunrise Highway and Uncua		loyer Representative to Control Kay	516-
f. Type of Establishment (Factory, mine, wholesaler, etc.)			541-7700
decail C ore	g. rdent	Retail	
h. The above-named employer has engaged in and is engaging in unfi	air labor pre		
Subsections (1) and (3) (3)		of the National L	abor Relations Act,
and these unfair labor practices are unfair labor practices at acti-	g commerce	within the meaning of the A	ict.
2. Basis of the Charge (Be specific as to facts, names, addresses, p			
Galabina from the coore in massage	loyer t	ransterred Lies	Laure
Levistown in order to discourage	re har	werehorshir and	score
in the Fel tioning Unions.	se ner	is more such and	support
		,	
On or about June 18, 1973 hr. Seri	ard Lu	rehy was dischar	rged from
ay's Department Store for support	ing th	e Petitioning Un	ion and
for his membership in the Union			
			*
By the above and other acts, the above-named employer has interfered	with, restra	sined, and coassed unployees	s is the eversine of
The section / of the Act.			
3. Full Name of Party Filing Charge (If labor organization, give full LCCAL 30, ENTERNATIONAL UNION OF OPERATIONAL UNION OPERATIONAL UN	NG ENG	NEEDS AFI-CIO	and
OCAL 307 SERVICE ELPLOYEES INTERNATION	AL UNI	ON AFL-CIO	ma
a. Address (Street and number, city, State, and ZIP code)			Telephone No.
317 Broadway, New York, N.Y. 10003		77	77-3200
 Full Name of National or international Labor Organization of Which when charge is filed by a labor organization) 	lt le en A	ffiliate or Constituent Unit	(To be filled in
and the so there by a labor organization,			
6. DECLARA	TION		
declare that I have read the alone charge and that the statements the	reis are tro	e to the best of my knowledg	ge and belief.
By A hath Mach ROBERT D. BRAD	YY	Attorney	
Attorneys for Local 30. Internation	al Uni	on of Operating	Engrs AFI -C
Address Internat	onal I	Union AFL-CIO	
11 Park Place, NY, NY 10007 (Tel	phote stall	ber) (Dat	
FILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED I	T FINE AND	IMPRISONMENT (U.S. CODE	TITLE 18.
		1001101	SPO 768-071 ./

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General Counsel's Exh	libit 1(e).				
M NL (8-801 (2-67)	Form Approved Badget Bureau No. 64-R001.12				
UNITED STATES OF NATIONAL LABOR RELA	F AMERICA				
CHARGE AGAINST E					
TRUCTIONS. Fil.	DO NOT WRITE IN THIS SPACE				
TRUCTIONS: File an original and 4 copies of this charge with N onal director for the region in which the alleged unfair labor pract					
urred or is occurring.	Date Filed 7-2-73				
Name of Employer	CHARGE IS BROUGHT				
MANG DEPARTMENT STORE	b. Number of Workern Employed				
Address of Establishment (Street and number, city, State, and ZIP code) Sunrise Highway and Undua	d. Employer Representative to Contact e. Phone N				
Toad, Massapecua, I.I., N.Y. Type of Establishment (Factory, mine, wholesaler, etc.)	Mr. Kay 516-				
etail Store	g. Identify Principal Product or Service Letail Sales				
he above-named employer has engaged in and is engaging in unfaitheections (1) and (2)	ir labor practices within the meaning of section 8(a).				
NI-	of the National Labor Belations Act				
nd these unfair labor practices are unfair labor practices affecting asis of the Charge (Be specific as to facts, names, addresses, pla	g commerce within the meaning of the Act.				
or about June 19, 1973 the Employer com the store in Mossapequa, L.I., to discourage her membership and dons.	May's Store in Levittown in				
or about June 18, 1973 Mr. Bernard y's Department Store for supporting r his membership in the Union.	Murphy was discharged from the Petitioning Union and				
above and other acts, the above-named employer has interfered wits guaranteed in Section 7 of the Act. Il Name of Party Filing Charge (If labor organization, give full as	ama includia a la al-				
CAL 307. SERVICE EMPLOYEES INTERNACT	ATTNC ENCINEEDS ART OF .				
reas (Street and number, city, State and ZIP code) 7 Broadway, New York, N.Y. 10003	4b. Telephone No.				
I Name of National or International Labor Organization of Which I	777-3200 It is an Affiliate or Constituent Unit (To be filled in				
o to the of t install default to the					
6. BECLARATE					
(Signature of representative or person filing charge) torneys for Local 30, International GAL 307, Service Employees Internation	na! Union AFI-CIO				
Talk Flace, New York, N.Y. (Teleph	lose number) 227-2242 (Date) 6/70/73				
LY FALSE TATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND DEPRESONMENT (U.S. CODE, TITLE 18,					
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General Counsel's Ext	-(8)			
FORM NLRD '1 (2-67)			pproved Bureau No. 64-R001.12	
UNITED STATES OF NATIONAL LABOR RELA				
CHARGE AGAINST E				
Clinide Adams 1	.mr Loren			
INSTRUCTIONS: File an original and 4 copies of this charge with N	IRR Con	DO NOT WRITE	IN THIS SPACE	
regional director for the region in which the alleged unfair labor pract		129-CL-351/		
occurred or is occurring	Dat	e Filed C. 2	3-73	
1. EMPLOYER AGAINST WHOM	CHARGE IS F	ROUGHT	, 25	
e. Name of Employer		Number of Workers	Employed	
J, W. May's Inc. c. Address of Establishment (Street and rumber, city, State,	T d Fasioner	Representative to	Contact e. Phone N	
and ZIP code) Surrise Highway and Unqua Rd.	d. Employer	Representative to	516-	
Massapeque Park, New York		Katz	541-770	
f. Type of Establishment (Factory, mine, wholesaler, etc.)	1	rincipal Product or		
retailer		partment stor		
h. The above-named employer has engaged in and is engaging in unfo	air labor practice	es within the meani	ng of section 8 (a), nal Labor Relations Ac	
(List subsections)		of the Mario	al Capor Relations Ac	
and these unfair labor practices are unfair labor practices affecti				
. Basis of the Charge (Be specific as to facts, names, addresses, p	rears if solved,	unico, piaces, etc.)		
On or about August 21, 1973, the a				
its officers and agents discharged its emplo of her membership in and activities on behal				
Union of Operating Engineers.	I OI LOCAL	Jo, Internat	LUMEL	
L.G JUNE				
On or about sale 16, 1973, the about				
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Union of Operating Ragineers.				
By the above and other acts, the above-named employer has interfered	d with, restraine	d, and coerced emp	loyees in the exercise	
the rights guaranteed in Section 7 of the Act.				
3. Full Name of Party Filing Charge (If labor organization, give ful	l same, includin	g local name and n	umber)	
Laura Gribbins				
4a. Address (Street and number, city, State, and ZIP code)			4b. Telephone No.	
			516-SU-1-6466	
5. Full Name of National or International Labor Organization of Wh	ich it is so Affil	liste or Constituent		
when charge is filed by a labor organization)				
	ATION			
6. DECLAR I declare that I have read the phove charge and that the statements t		o the best of my ke	owledge and belief.	
1. 11.51				
By June Mubbins	An	Individual (Title, if any)		
(Signature of representative or person filing charge)		Title, Il suy,		
Address Seaford, N.Y. 11783 516	6-8u-1-6466		8/23/73	
(1)	elephone number		CORP. COLUMN	
WELLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED SECTION 1001)	BY FINE AND I	MPRISONMEPT (U.S.	CODE, TITLE 18.	
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General Counsel's Exhibit 1(i). original

UNITED STATES OF AMERICA Before the National Labor Relations Board Region 29

J. W. MAY'S, INC.

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, ALF-CIO

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, AND LOCAL 307, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

and

LAURA GRIBBINS

Case Nos. 29-CA-3441, 29-Ca-3458,

and

29-Ca-3519.

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING

It having been charged in Case No. 29-Ca-3441 by Local Union No. 30, International Union of Operating Engineers, AFL-CIO, herein called Local 30, in Case No. 29-CA-3458 by Local 30 and Local 307, Service Employees International

Union, AFL-CIO, herein called Local 307 and in Case No. 29-CA-3519 by Laura Gribbins, an individual, that J. W. May's, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs of delay.

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations—Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations—Series 8, as amended, Section 102.15 hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

- 1(a) The Charge in Case No. 29-CA-3441 was filed by Local 30 on June 19, 1973, and served by registered mail upon Respondent on or about June 21, 1973.
- (b) The Charge in Case No. 29-CA-3458 was filed by Local 30 and Local 307 on June 28, 1973 and served by registered mail upon Respondent on or about July 2, 1973.
- (c) The First Amended Charge in Case No. 29-CA-3458 was filed by Local 30 and Local 307 on July 2, 1973, and served by registered mail upon Respondent on or about July 5, 1973.

- (d) The Charge in Case No. 29-CA-3519 was filed by Laura Gribbins on August 23, 1973 and served by registered mail upon Respondent on or about August 24, 1973.
- 2. Respondent is, and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.
- 3. At all times material herein Respondent has maintained its principal office and place of business at 510 Fulton Street, in the Borough of Brooklyn, City and State of New York, and various other places of business in the State of New York, inter alia, a place of business located at Sunrise Highway and Unqua Road in the Town of Massapequa Park, County of Nassau and State of New York, herein called the Massapequa Park store, where it is, and has been at all times material herein, engaged in the retail sale and distribution of clothing, household appliances, jewelry, cosmetics, and related products.
- 4(a) During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its operations, derived gross revenues therefrom in excess of \$500,000.
- (b) During the past year, which period is representative of its annual operations generally, Respondent in the course and conduct of its business, purchased and caused to be transported and delivered to its places of business, goods and materials valued in excess of \$50,000 of which goods and materials valued in excess of \$50,000 were transported and delivered to its place of business in interstate commerce directly from states of the United States other than the state in which it is located.

- 5. Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
- 6. Local 30 and Local 307 are and have been at all times material herein labor organizations within the meaning of Section 2(5) of the Act.
- 7(a) Simon Katz is, and has been at all times material herein, the Vice President of Respondent acting on its behalf, and an agent thereof.
- (b) Paul DeRonde, Harry Schob, Al Kaye, Charles Hord and A. Zayle are, and have been at all times material herein, agents of Respondent, acting on its behalf, and supervisors thereof within the meaning of Section 2(11) of the Act.
- 8. In or about March 1973, Local 30 and in or about June 1973, Local 30 acting jointly with Local 307, began respective organizational campaigns among Respondent's employees.
- 9(a). On March 22, 1973, Local 30 filed a petition in Case No. 29-RC-2202 for an election to determine whether a majority of Respondent's maintenance employees wished it to represent them for the purpose of collective bargaining within the meaning of the Act.
- (b) On May 2, 1973 *inter alia*, a formal hearing was held in Case No. 29-RC-2202 and during the course of this hearing, Michael Brandt testified at the request of Local 30.
- (c) On May 29, 1973, the undersigned Regional Director for Region 29 issued a Decision and Order dismissing the petition referred to above in subparagraphs (a) and (b).
- 10(a). On June 19, 1973, Local 30 and Local 307 jointly filed a petition in Case No. 29-RC-2287 for an election to determine whether a majority of Respondent's maintenance

and housekeeping employees wished to have the aforementioned unions, acting jointly, represent them for the purpose of collective bargaining within the meaning of the Act.

- (b). On July 23, 1973, *inter alia*, a formal hearing was held in Case No. 29-RC-2287 and during the course of this hearing, Laura Gribbins testified at the request of Local 30 and Local 307.
- (c). On August 30, 1973, the undersigned Regional Director for Region 29 issued a Decision and Order dismissing the petition referred to above in subparagraphs (a) and (b).
- 11. On or about June 7, 12, and 13, 1973, Respondent by Charles Hord, Harry Schob, its supervisors and agents and by Simon Katz its Vice President and agent, at the Massapequa Park store, warned and directed its employees to refrain from becoming or remaining members of Local 30 and Local 307, and to refrain from giving any assistance or support to them.
- 12. On or about June 7, 1973 and June 13, 1973 and on various other dates presently unknown during the months of February through June 1973, Respondent by Simon Katz, its Vice President and agent, and by Paul DeRonde and Harry Schob, its supervisors and agents, at the Massapequa Park store, threatened its employees with discharge, withholding wage increases and promotions and other reprisals if they became or remained members of Local 30 and Local 307, and if they gave any assistance and support to them.
- 13. On or about June 12 and 19, 1973, Respondent by Charles Hord its supervisor and agent, at the Massapequa Park store, offered and promised to its employees wage increases, promotions, and other benefits and improvements in their working conditions and terms of employment to induce them to refrain from becoming or remaining members of

Local 30 and Local 307, and to refrain from giving any assistance or support to them, and to induce them to abandon their membership in an activity on their behalf.

- 14. On or about June 12, 1973, and on various other dates presently unknown during the month of August 1973, Respondent by Al Kaye and A. Zayle, its supervisors and agents, at the Massapequa Park store, and by other agents and supervisors presently unknown at the Massapequa Park store, kept under surveillance the activities of Local 30 and Local 307 and the concerted activities of its employees conducted for the purpose of collective bargaining and other mutual aid and protection.
- 15. On or about June 7 and 15, 1973, Respondent by Simon Katz, its Vice President and agent, and by Harry Schob, its supervisor and agent, at the Massapequa Park store, created the impression of surveillance of the activities of Local 30 and Local 307 and the concerted activities of its employees conducted for the purpose of collective bargaining and other mutual aid and protection.
- 16. On or about June 12 and 15, 1973, Respondent by Charles Hord and Harry Schob its supervisors and agents at the Massapequa Park store, interrogated its employees concerning the employees' membership in, activities on behalf of, and sympathy in and for Local 30 and Local 307.
- 17. From on or about June 20, 1973, to July 2, 1973, Respondent transferred its employee, Laura Gribbins, from its Massapequa Park store, to its place of business in Levittown, New York.
- 18. On or about the dates listed below, Respondent discharged the following named employees:

Name of Employee	Date of Discharge-Layoff	
William Fazio	June 8, 1973	
Paul Dashefsky	June 13, 1973	
Michael Brandt	June 13, 1973	
Bernard Murphy	June 18, 1973	
Laura Gribbins	August 21, 1973	

- 19. Since the dates of the discharge of the employees as described above in paragraph 18, Respondent has failed and refused to reinstate, or offer to reinstate, said employees to their former or substantially equivalent positions of employment.
- 20. Respondent transferred its employee Laura Gribbins from its Massapequa Park store to its place of business in Levittown, N. Y., as described above in paragraph 17 and discharged and thereafter failed and refused to reinstate its employees William Fazio, Paul Dashefsky, Michael Brandt, Bernard Murphy, and Laura Gribbins as described above in paragraphs 18 and 19, because said employees joined and assisted Local 30 and Local 307 and engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection.
- 21. Respondent discharged and thereafter failed and refused to reinstate its employees Michael Brandt and Laura Gribbins as described above in paragraphs 18, 19 and 20, because said employees gave testimony under the Act, in Case Nos. 29-RC-2202 and 29-RC-2287, as described in paragraphs 9 and 10 above.
- 22. By the acts described above in paragraphs 11 through 21 and by each of said acts, Respondent interferred with, restrained and coerced, and is interferring with, restraining and coercing its employees in the exercise of the rights

guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a) (1) and Section 2(6) and (7) of the Act.

- 23. By the acts described above in paragraphs 17 through 20, and by each of said acts, Respondent discriminated and is discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a) (3) and Section 2(6) and (7) of the Act.
- 24. By the acts described above in paragraph 21 and by each of said acts, Respondent discriminated and is discriminating against employees for giving testimony under the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a) (4) and Section 2(6) and (7) of the Act.
- 25. The acts of Respondent described above in paragraphs 11 through 21, occurring in connection with the operations of Respondent described above in paragraphs 2 through 5, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 15th day of October, 1973, at 11 a.m. at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at

which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless it does so all the allegations in the Consolidated Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 14th day of September, 1973.

SAMUEL M. KAYNARD, Samuel M. Kaynard, Regional Director, National Labor Relations Board, Region 29, 16 Court Street, Brooklyn, New York 11241.

UNITED STATES OF AMERICA

Before the National Labor Relations Board Region 29

J. W. MAY'S, INC.,

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO.

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, AND LOCAL 307, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

and

LAURA GRIBBINS.

Case Nos. 29-CA-3441, 29-CA-3458, 29-CA-3519.

MOTION FOR BILL OF PARTICULARS.

Comes now J. W. Mays, Inc., Employer in the above matter, and moves for a bill of particulars, as follows:

1. With respect to the allegations of par. 11 of the complaint, set forth the following:

- (a) on which dates, and at what time on each of said dates, did Charles Hord make the warnings and directions set out in par. 11.
- (b) where in the store did Charles Hord make the said warnings and directions, on each of the dates and each of the times set out in (a).
- (c) Name the employees to whom the said warnings and directions were made by Hord on or at each of the dates, each of the times, and each of the places set out in (a) and (b).
- (d) on which dates, and at what time, on each of said dates, did Harry Schob make the warnings and directions set out in par. 11.
- (e) where in the store did Harry Schob make the said warnings and directions, on each of the dates and each of the times set out in (d).
- (f) Name the employees to whom the said warnings and directions were made by Schob on or at each of the dates, each of the times, and each of the places set out in (d) and (e).
- (g) On which dates, and at what times on each of said dates did Simon Katz make the warnings and directions set out in par. 11.
- (h) where in the store did Simon Katz make the said warnings and directions, on each of the dates and each of the times set out in (g).
- (i) Name the employees to whom the said warnings and directions were made by Katz on or at each of the dates, each of the times, and each of the places set out in (g) and (h).
- 2. With respects to the allegations of par. 12 of the complaint, set forth the following:

- (a) on which dates, and at what times, on each of said dates, did Simon Katz make the threats set out in par. 12.
- (b) where in the store did Simon Katz make the said threats on each of the dates and each of the times set out in (a).
- (c) Name the employees to whom the said threats were made by Katz on or at each of the dates, each of the times, and each of the places set out in (a) and (b).
- (d) On which dates, and at what times, on each of said dates, did Paul De Ronde make the threats set out in par. 12.
- (e) where in the store did Paul De Ronde make the said threats on each of the dates and each of the times set out in (d).
- (f) Name the employees to whom the said threats were made by De Ronde on or at each of the dates, each of the times, and each of the places set out in (d) and (e).
- (g) On which dates, and at what times, did Harry Schob make the threats set out in par. 12.
- (h) where in the store did Harry Schob make the said threats on each of the dates and each of the times set out in (g).
- (i) Name in the employees to whom the said threats were made by Schob on or at each of the dates, each of the times, and each of the places set out in (g) and (h).
- 3. With respect to the allegations of par. 13 of the complaint, set forth the following:
- (a) Where in the store, and at what time or times, on or about June 12, 1973, did Charles Hord make the offers and promises set out in par. 13.

- (b) Where in the store and at what time or times, on or about June 19, 1973, did Charles Hord make the offers and promises set out in par. 13.
- (c) Name the employees to whom the said offers and promises were made, on or about June 12, 1973, at each of the times set out in (a).
- (d) Name the employees to whom the said offers and promises were made, on or about June 19, 1973, at each of the times set out in (b).
- 4. With respect to the allegations of par. 14 of the complaint, set forth the following:
- (a) At what time or times, on or about June 12, 1973, and where in the store, did Al Kaye maintain the surveillance as alleged in par. 14.
- (b) If the other dates in August, 1973, are now known, set them forth, and, in any case, set down where in the store, and at what times (on each of said dates, if known) did Al Kaye then maintain the surveillance as alleged in par. 14.
- (c) Set forth the alleged activities of Local 30 and Local 307, and the alleged concerted activities of the employees, maintained under surveillance at each of the separate times, places, and dates set out in (a) and (b).
- (d) Set out the manner in which the surveillance by Al Kaye over the alleged activites referred to in (c) was maintained at each of the separate times, places, and dates set out in (a) and (b).
- (e) At what times or times, on or about June 12, 1973, and where in the store, did A. Zayle maintain the surveillance as alleged in par. 14.
- (f) If the other dates in August, 1973, are now known, set them forth, and, in any case, set down where in the store, and

at what times (on each of said dates, if known) did A. Zayle then maintain the surveillance as alleged in par. 14.

- (g) Set forth the alleged activities of Local 30 and Local 307, and the alleged concerted activities of the employees, maintained under surveillance at each of the separate times, places, and dates set out in (e) and (f).
- (h) Set out the manner in which the surveillance by A. Zayle over the alleged activities referred to in (g) was maintained at each of the separate times, places, and dates set out in (e) and (f).
- 5. With respect to the allegations of par. 15 of the complaint, set forth the following:
- (a) At what time or times, and where in the store, did each of Simon Katz and Harry Schob create the impression of surveillance on each of on or about June 7, 1973, and on or about June 15, 1973, as alleged in par. 15 of the complaint.
- (b) set forth, as to each of Simon Katz and Harry Schob, the nature of the activities of Local 30 and Local 307, and the nature of the concerted employee activities as alleged in par. 15 of the complaint, with respect to which each of them allegedly created the impression of surveillance on each of on or about June 7, 1973 and on or about June 15, 1973.
- (c) set forth the manner separately as to each time and place in the store, in which each of Simon Katz and Harry Schob, on each of on or about June 7, 1973, and June 15, 1973, created the impression of surveillance as alleged in par. 15 of the complaint.
- 6. With respect to the allegations of par. 16 of the complaint, set forth the following:
- (a) At what time or times, and where in the store, did each of Charles Hord and Harry Schob make the interrogations

alleged in par. 16 of the complaint, on each of on or about June 12, 1973 and on or about June 15, 1973.

- (b) Name the employees to which the interrogations described in (a) were made.
 - (c) set forth the content of each interrogation.
- 7. Set forth the dates on which Laura Gribbins worked in the Levittown store during the time of her employment, who gave her the transfer order with respect to the transfer referred to in par. 17 of the complaint, the date thereof, and whether it was in writing or oral. If in writing, set forth a true copy. If oral, set forth the substance thereof.
- 8. As regards par. 12 of the complaint, set forth when, where, and by whom, the threat of "other reprisals" was made, as well as the specific contents of said "other reprisals".
- 9. As regards par. 13 of the complaint, set forth when, where, and by whom, offers and promises of "other benefits and improvements" in "working conditions and terms of employment" were made, as well as the specific contents of those other benefits and improvements.

Employer further moves that General Counsel be precluded from offering any testimony with respect to any complaint allegations concerning which particulars are sought and are not furnished.

BRIEF STATEMENT OF GROUNDS

The party charged, J. W. Mays, Inc., is entitled to know the indicated particulars of the position of the complainant, so that it may properly prepare for trial. Additionally, none of the named supervisors have a permanent station in the store.

Simon Katz travels all the stores, Charles Hord travels several of the stores, while De Ronde, Schob, and Zayle can be all over the store in the course of their duties, as can Hord or Katz. There are some 650 employees in the Massapequa store alone, while Mays has some 5700 employees (all these facts have been established in 29-RC-2202 and/or in 29-RC-2287). The supervisors might have up to dozens of conversations on all sorts of store matters every day. Surely, in the course of its preparations, Employer is entitled to the right to have these people possess some better idea of the circumstances charged than is indicated by complaint generalities (notwithstanding denial of the commission of any of the offenses charged). Employer ought not be confronted with pronunciamentos at the time of trial.

We may also note that, regardless of our position, or even assuming we actually believe we know the details of the position of General Counsel (and we don't), the functions of a bill of particulars is to have the pleader himself reveal the details of his position. To put it another way, it is elementary that the issue at this point is not whether we can reasonably assume what General Counsel will try to detail. The point is, we are entitled to have General Counsel tell us. This ought not be a trial by combat and, happily, present General Counsel, by instituting experimental pre-trial procedures, seems to be ready to depart from the jealous secrecy with which justice is supposed to be accomplished, something the Federal courts have adjured for over a generation. It is not unknown that over-eager Regional personnel "throw in the kitchen sink" to bolster, for example, discharge cases. Nor is it beyond reason to opine, while we are at it, that consolidations sometimes give rise to spillover or cumulative effects. It is not unfair to delimit such advantages by at least fixing the parameters of our claimed illegalities, and we are particularly entitled to

unscramble supervisor lumpings, date lumpings, and the like, as well as break down such generalities as the threat of "other reprisals", or the promise of "other benefits and improvements."

As regards Laura Gribbins, it has already been established, in 29-RC-2287, that she was required to work in Levittown as a part of her regular duties prior to the onset of any organizational activities. The allegation here is, she was transferred, and this on a date allegedly coincident with these activities. We are thus entitled to the indicated details, to enable us to check for specific records and potential witnesses, and to collect such other specific evidence as is available, predicated on the details of the claim.

As regards surveillance, apart from the already indicated basic right to know particulars of any claim, the Board recently held (July 9, 1973), that it was not unlawful for even an employer found guilty of flagrant unfair labor practices to take steps to see that union adherents are doing their work, rather than engaging in union activity on company time (East Side Shoppers, 204 NLRB, No. 125). The Employer is thus entitled to know the particulars requested so as to be able to ascertain, in the course of its pre-trial preparation, whether this defense is also applicable.

MILLER AND SEEGER, Attorneys for Employer, J. W. Mays, Inc., 660 Madison Avenue, New York, N. Y. 10021, (212) PL-2-0350, By: Seymour W. Miller.

I, a member of the Bar of the State of New York, certify that, simultaneously with the mailing of this motion (together with 4 copies thereof) to the Chief Administrative Law Judge, a true copy was duly mailed to:

> Ms. Laura Gribbins 1310 Shaw Place Seaford, N. Y. 11783

Corcoran and Brady, Esqs. 11 Park Place New York, N. Y. 10007

Hon. Samuel M. Kaynard Regional Director, 29th Region National Labor Relations Board 16 Court Street Brooklyn, N. Y. 11241

SEYMOUR W. MILLER.

UNITED STATES OF AMERICA

Before the National Labor Relations Board Region 29

J. W. MAY'S, INC.,

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO AND LOCAL 307, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

and

LAURA GRIBBINS.

Cases Nos. 29-CA-3441, 29-CA-3458, 29-CA-3519.

REPLY IN PART AND OPPOSITION IN PART TO MOTION FOR BILL OF PARTICULARS.

Pursuant to a Motion for a Bill of Particulars dated September 26, 1973, by the Respondent J. W. Mays, Inc., through its attorneys, Miller and Seeger Esqs., the undersigned Counsel for the General Counsel opposes in part and replies in part to the Motion for a Bill of Particulars.

- 1. (a) With respect to paragraphs 1(a) and (b) of the Motion, Charles Hord made the warnings and directions described in paragraph 11 of the Complaint on or about June 12, 1973, at about 11 a.m., in his office at Respondent's Massapequa store, herein called Respondent's store.
- (b) With respect to paragraphs 1(d) and (e) of the Motion, Harry Schob made the warnings and directions described in paragraph 11 of the Complaint on or about June 13, 1973, at about 10 a.m., in the porters' locker room in Respondent's store.
- (c) With respect to paragraphs 1(g) and (h) of the Motion, Simon Katz made the warnings and directions set out in paragraph 11 of the Complaint on or about June 7, 1973 in the afternoon, in Respondent's personnel office; and on or about June 13, 1973, in the afternoon, in the office of Store Manager Al Kaye.
- (d) With respect to paragraphs 1(c), (f) and (i) of the Motion, General Counsel asserts that Respondent is not entitled to the names of the employees to whom the said warnings and directions were made, since such a demand calls for the disclosure of evidentiary matter.
- 2. (a) With respect to paragraphs 2(a) and (b) of the Metion, Simon Katz made threats described in paragraph 12 of the Complaint on or about June 7, 1973, in the afternoon, in Respondent's personnel office; and on or about June 13, 1973, in the afternoon, in the office of Store Manager Al Kaye.
- (b) With respect to paragraphs 2(d) and (e) of the Motion, Paul DeRonde made threats to employees, described

¹ Walsh-Lumpkin Wholesale Drugs, 129 NLRB 294; Dal-Tex Optical Co., 130 NLRB 1313; Wm. H. Dixon, 130 NLRB 1204; North American Rockwell Corp. v. N.L.R.B., 389 F. 2d 866, 871 (C.A. 10).

in paragraph 12 of the Complaint, in or about February, 1973, on a date presently unknown, in Respondent's maintenance shop; and on various other dates presently unknown, from February through June, 1973, and particularly in or about the first week of June, 1973. Paul DeRonde made such threats in Respondent's store, in the maintenance shop and possibly in other parts of the store presently unknown.

- (c) With respect to paragraphs 2(g) and (h) of the Motion, Harry Schob made the threats to employees described in paragraph 12 of the Complaint on or about June 13, 1973, at about 10 a.m., in the porters' locker room; on or about June 15, 1973 at about 3 p.m., in the reaming department of Respondent's store; and on or about June 16, 1973, at about 3:30 to 4 p.m., in the porters' room.
- (d) With respect to paragraphs 2(c), (f) and (i) of Respondent's Motion, General Counsel asserts that Respondent is not entitled to the names of the employees to whom the said threats were made, since such a demand calls for the disclosure of evidentiary matter.²
- 3. (a) With respect to paragraphs 3(a) and (b) of the Motion, Charles Hord made the promises and offers described in paragraph 13 of the Complaint on or about June 12, 1973, at about 11 a.m., in his office; and on or about June 19, 1973, at about 11 a.m., in the cafeteria located in Respondent's store.
- (b) With respect to paragraphs 3(c) and (d) of Respondent's Motion, General Counsel asserts that Respondent is not entitled to the names of the employees to whom the said promises and offers were made, since such a demand calls for the disclosure of evidentiary matter.³

² See footnote 1, supra.

³ See footnote 1, supra.

- 4. (a) With respect to paragraph 4(a) of Respondent's Motion, Al Kaye maintained surveillance as described in paragraph 14 of the Complaint on or about June 12, 1973, at about 7 to 8 a.m., in the hardware department in the basement of Respondent's store, and generally throughout the said store.
- (b) With respect to paragraphs 4(b) and (f) of Respondent's Motion, Respondent maintained surveillance from on or about August 1, 1973, until on or about August 21, 1973, at various times throughout the work day, by agents of Respondent presently unknown, including store detectives.
- (c) With respect to paragraph 4(e) of Respondent's Motion, A. Zayle maintained surveillance as described in paragraph 14 of the Complaint, on or about June 12, 1973, at about 7 to 8 a.m., in the hardware department in the basement of Respondent's store, and generally throughout the said store.
- (d) With respect to paragraphs 4(c), (d), (g) and (h) of Respondent's Motion, General Counsel asserts that Respondent is not entitled to information as to the activities under surveillance, or the manner of surveillance by Respondent, since such demands call for disclosure of evidentiary matter.⁴
- 5. (a) With respect to paragraph 5(a) of Respondent's Motion, Simon Katz and Harry Schob created the impression of surveillance as described in paragraph 15 of the Complaint on or about June 7, 1973, in the afternoon, in the personnel office of Respondent; Harry Schob created the impression of surveillance on or about June 13, 1973, at about 10 a.m., in the porters' locker room in Respondent's store; and on or about June 16, 1973, at about 3:30 to 4 p.m., in the porters' room.

⁴ See footnote 1, supra.

- (b) With respect to paragraph 5(b) of the Motion, General Counsel asserts that Respondent is not entitled to information as to the activities for which Respondent created the impression of surveillance, since such a demand calls for the disclosure of evidentiary matter.⁵
- 6. (a) With respect to paragraph 6(a) of the Motion, Charles Hord interrogated employees as described in paragraph 16 of the Complaint on or about June 12, 1973, at about 11 a.m., in his office. Harry Schob interrogated employees on or about June 16, 1973, at about 3:30 to 4 p.m., in the porters' room.
- (b) With respect to paragraphs 6(b) and (c) of the Motion, General Counsel asserts that Respondent is not entitled to the names of the employees interrogated, or to the contents of said interrogation, since such demands call for the disclosure of evidentiary matter.⁶
- 7. With respect to paragraph 7 of the Motion, Laura Gribbins worked in Respondent's Levittown store from on or about June 20, 1973 until on or about July 2, 1973. She was given the transfer order orally on or about June 19, 1973 by Charles Hord. General Counsel asserts that Respondent is not entitled to the substance of the said transfer order since such a demand calls for disclosure of evidentiary matter.
- 8. With respect to paragraph 8 of the Motion, Paul DeRonde made threats, in Respondent's maintenance shop, in or about February, 1973, on a date presently unknown; and in or about the late spring of 1973, the dates, times and exact place in the store of which are presently unknown; that em-

⁵ See footnote 1, supra.

See footnote 1, supra.

⁷ See footnote 1, supra.

ployees would not be promoted. Simon Katz made a general threat of reprisal on or about June 7, 1973, in the afternoon, in the personnel office of Respondent. Simon Katz threatened employees with bad references for future employers on or about June 13, 1973, in the afternoon, in the office of store manager Al Kaye; Harry Schob made a general threat of reprisal on or about June 13, 1973, at about 10 a.m., in the porters' locker room. General Counsel asserts that Respondent is not entitled to the specific contents of said reprisals, since such a demand calls for the disclosure of evidentiary matter.8

- 9. With respect to paragraph 9 of the Motion, General Counsel does not presently contend that Respondent offered and promised to its employees benefits and improvements other than wage increases and promotions, as alleged in paragraph 13 of the Complaint.
- 10. The General Counsel respectfully requests that Respondent's Motion that General Counsel be precluded from offering any testimony as to allegations concerning which particulars are sought and are not furnished, be denied.

Dated at Brooklyn, New York this 12th day of November, 1973.

Respectfully submitted,
STEPHEN E. APPELL,
Counsel for the General Counsel
National Labor Relations Board
Region 29,
16 Court Street,
Brooklyn, New York.

^{*} See footnote 1, supra.

To: Eugene G. Goslee, Chief Administrative Law Judge, Division of Judges, National Labor Relations Board, Washington, D. C. 20570.

J. W. Mays, Inc., Sunrise Highway and Unqua Road, Massapequa Park, New York 11758.

Miller and Seeger Esqs., 660 Madison Avenue, New York, New York 10021, Attn.: Seymour W. Miller Esq.

Local Union No. 30, International Union of Operating, Engineers, AFL-CIO and Local 307, Service Employees, International Union, AFL-CIO, 817 Broadway,

Corcoran and Brady Esqs., 11 Park Place, New York, New York 10007, Attn.: Robert D. Brady, Esq.

New York, New York 10003.

Laura Gribbins, 1310 Shaw Place, Seaford, New York 11783.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

J. W. MAY'S, INC.,

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,

Case No. 29-CA-3441,

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, AND LOCAL 307, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Case No. 29-CA-3458.

and

LAURA GRIBBINS,

Case No. 29-CA-3519.

ORDER ON RESPONDENT'S MOTION FOR BILL OF PARTICULARS.

Respondent having filed a Motion for Bill of Particulars; the General Counsel having submitted an Opposition in Part

and Reply in Part to the aforesaid Motion; and the said matter having been duly referred to the undersigned for disposition; now, after reading and considering the foregoing papers and the pleadings in this proceeding,

IT IS HEREBY ORDERED that Respondent's Motion for a Bill of Particulars, to the extent not complied with by the additional information stated in General Counsel's Opposition and Reply, be, and the same hereby is, denied for the reasons which are stated in the General Counsel's Opposition and which are found to be good and sufficient.

ARTHUR LEFF, Arthur Leff, Administrative Law Judge.

Dated: November 14, 1973 Washington, D. C.

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OCCUPATION	NAME	DATE EMP.	SALARY
MAINTHSKPR.	JAMES MASON	4/ 6/70	\$ 102.90
	JOHNNY BROOKS	10/17/72	110.00
	GERALD GILL	2/12/73	110.00
	BERNARD MURPHY	2/19/73	110.00
BAILING HANGER MR. "B"	THOMAS ONDERKO	2/19/73	110.00
	CHARLES GOFFNEY	3/19/73	110.00
	JOSEPH BURTUGNO	3/29/73	110.00
	CECELIA DWYER	10/ 7/69	86.00
	MAY RAGO	6/ 2/70	86.00
	JOAN GARCIA	12/11/72	76.00
	CAROLYN DENNES	8/22/67	49.00
	ELIZABETH MC DONALD	9/16/69	36.00
	LORENZA GRAY	9/23/67	114.00
	WALTER PORTER	10/ 5/65	60.00
	STEVEN SAMUELSON	9/12/72	110.00
DISPLAY CARPENTER	PAUL WARWEL	1/20/64	175.00
CARPENTER CARPENTER PAINTER KITCHEN MAINT. HELPERS	ANTHONY DE CANIO	9/26/68	155.00
	WILLIAM FAZIO	3/17/71	115.00
	JOSEPH COLONICO	2/ 2/73	110.00
	LEROY DUNN	8/28/72	100.00
	THOMAS KLEPACK	12/20/71	150.00
	SALVATORE GAMBINO	6/ 5/72	160.08
	FRANK COLLETTO	6/17/68	166.96
	JOHN CANNON	12/11/72	\$3.00 per hr
			L.P.T.
	THOMAS IZZO	8/17/72	135.00
	MICHAEL BRANDT	1/ 8/73	140.00
	ROBERT ROUDABUSH	2/ 6/73	145.00

June 7, 1973

This moring at about 7:15 AM Mike Bandt had a list of name's of Maint Hkeeprs and how much each man made a week, he said that the Maint men are going to get the union in to May's he though that I was off the clock but when he found out I was on the clock he wanted to know if I wanted to come in to the union with them and if I can get my men to come with them.

He said we all will get a rise in pay and a 37-1/2 hour work week he also said that the union will be in May's in about a week or ten day's.

The above took place in the lunch room with my self and my men on our coffee brake

He also talked to two of my men and my self on the 2nd floor near the dress dept about some more thing's about the union we had to stop our work to talk to hem the other two men were J. Newcomb and J. Storm.

And also with one of my men Mr. B. Murphy on the first floor he also was at work at the time and had to stop work to talk to him when I went and asked Murphy what Mr Bandt said Murphy said that he wanted to know if he will sing a union card he said he will let him know then went back to work

I reported this matter to Mr Kay how asked me to make this statement which I am making at my own free will.

HARRY A. SCHAB.

June 7th 1973

Mr. Brandt was spoken to by myself relative to his soliciting Mays personnel on Mays time and on the selling floors and working areas of the store for union activity.

I told Mr. Brandt that he could solicite on his own time, either in the locker room, parking lot or even the lunch room, when our employees were not working; but that under no circumstances was he to attempt to organize anyone while they were performing their job and he, his. That working time was for work and nothing else and his actions kept them from doing their work.

I told him that this was a warning to be placed in his file jacket; and any reptition of the above soliciting or organizing on the companys time and working premises would lead to his immediate dismissal.

SIMON KATZ.

Mr Kaye and Mr De Ronde, Mr Brandt's supervisor were present at the meeting in Mr Kayes office at approximately 4:30 PM.

SIMON KATZ.

General Counsel's Exhibits 14 and 15.

General Counsel's Exhibit 14.

On Tuesday night on June 26, 1973 while I was riding on the elevator while working, John Cannon of maintenance started talking to me about the union. He was telling me about the hearing on July 11, 1973 for the two maintenance men, who were fired. How the two fired men would be reinstated with back pay plus 6% interest. How the union would be inevitable. Also how the union would give us extra benefits. Also there would be a vote after the hearing to see if there would be a union for the non sales personal. How if the management interfered they would be taken to court for trying to stop the union, by the Labor Relations Board. However he did not ask me to join the union. I do this of my own free will.

CHRISTOPHER LYNCH.

General Counsel's Exhibit 15.

June 7, 1973

On the above date sometime between 7:30 AM and 7:45 AM my manager Harry Shob myself and a fellow worker James Newcomb were approched by a Mister Mike Brandt on the second floor by dresses and were told about the Union and what it possiable could do for us. This talk took place during working hours.

I make this statement of my own free will.

GEORGE V. STORM.

Respondent's Exhibit 3.

MAYS

EMPLOYEES PERSONNEL RELATIONS REPORT

EMPLOYEE: Laura Gribbons DEPT: Display STORE: 05 Mass. DATE: 8/20/73 REMARKS: Spoken to on 8/20/73 Her supervisor, Charles Hord present, Pretaining to Company rules when taking merchandise out of Department for display merchandise must be signed for in to the book of said department, also spoken to about carrying purse on the selling floor during working Hrs.

X LAURA GRIBBINS EMPLOYEES SIGNATURE

C. HORD DEPT. MANAGER

Respondent's Exhibit 4.

You - Yourself

- 1. Refrain from holding personal conversations during work.
- 2. There must be no solicitation or distribution of any sort during work or in any of the public areas of the store.
- 6. Refrain from calling or shouting across the floors during business hours.
- 7. If you are reprimanded for any reason, your supervisor may place a written memorandum thereof in your file.

Respondent's Exhibit 5.

MAYS

EMPLOYEES PERSONNEL RELATIONS REPORT

EMPLOYEE: Bernard Murphy DEPT: Maint. Houskeeper

STORE: 05 - Massapequa DATE: 6/15/73 REMARKS: On his day off (Thursday 6/14/73) Bernard came into the store and went into restricted areas. This is a

violation of company rules & left through the receiving plat-

form.

BERNARD F. MURPHY J. MAGUIRE EMPLOYEES SIGNATURE DEPT. MANAGER



legar border in 1/7/14 ADDRESS 1310 Shaw Flace 1 K 3/1/09 CHANGE OF ADDRESS 561-6466 1 5000 1/2 CLOCK NO. SALARY HOURS:

(62-14 1.65 40 two might 1 Set.

M-265 1.65 F.T. Linney for operative

1.75 New of 6/7/69 Sinc 104

8/30/69 Dinc 15

Sinc 104 8/60

8/50 7-24-49 DATE DEPARTMENT 3-354 Hausewares stone 3/3/69 Driplay M-265 1.65 Respondent's Exhibit 2/2 1/20 Desplay Areplay M-253 2.12 F.T.

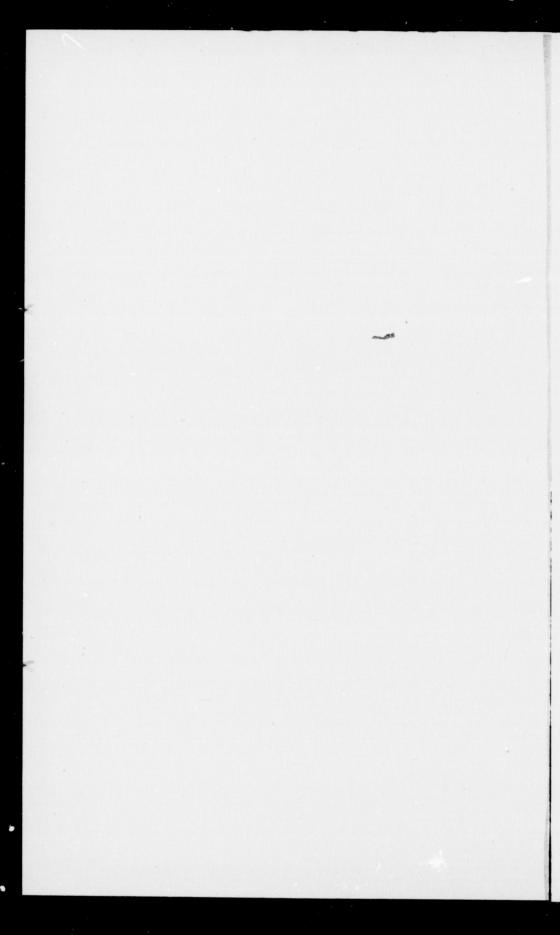
M-253 2.25 F.T.

M-252 2.25 F.T.

Susplay M-252 2.38 F.T.

3.622 Display 11/14/20 97 Inc. s Sic. 5 Use 3 from Days Pay *95 × Set ady 10/11/71 WE 12/18/71 2/16/72 502401 0605 2.75 3.00 F.T. Trucking to Tevitton & Woodman Stres Difts 3.25 F.T Spec. J. 1130 124/13 91 +H 2 3.50 Pore. 810 - \$140-8/21/13 Terminated





Respondent's Exhibit 10.

MAYS

EMPLOYEES PERSONNEL RELATIONS REPORT

EMPLOYEE: Mr. M. Brandt DATE: Maint STORE: Massapequa DEPT: Jun 11 73 REMARKS: Mr. Brandt is required to relamp and change burned out ballast in the morning hours from 7 AM to 9 AM instead he spent this time walking around the store and sometimes speaking to other employees.

EMPLOYEES SIGNATURE
Employee Refused
to Sign

PAUL DERONDE DEPT. MANAGER

Excerpts of Stenographic Transcript of Hearing of December 18, 1973.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the matter of: J. W. MAY'S INC.,

and

LOCAL UNION NO. 30, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO.

and

LOCAL UNION NO. 30 INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, and LOCAL 307, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

and

LAURA GRIBBINS.

Case Nos. 29-CA-3458, 3441, 3519.

16 Court Street

Brooklyn, New York
December 18, 1973

The above entitled matter came on for hearing, pursuant to Notice at 10:00 o'clock A.M.

Before: ROBERT COHN,

Administrative Law Judge.

Excerpts of Stenographic Transcript of Hearing of December 18, 1973.

Appearances:

Stephen E. Appell, Esq., 16 Court Street, Brooklyn, New York, appearing on behalf of General Counsel.

Seymour W. Miller, Esq., Miller & Seeger, Esqs., 660 Madison Avenue, New York, New York, appearing on behalf of Employer.

Also Present:

Joseph Lunger, Local 30, 817 Broadway, New York, N.Y.

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PROCEEDINGS

[6] Mr. Appell: Furthermore, the gentleman referred to in Paragraph 7B, as Al Kaye, his proper name is Al Katz, but he is known as Al Kaye in the Mays business operation to employees, and he will be so referred to hereinafter as Al Kaye.

Mr. Miller: So stipulated.

[11] Mr. Miller: Very briefly have a statement.

Obviously, the answers shows we deny the commission of even a single one, of the allegations alleging discriminatory conduct on the part of J. W. Mays and we will prove that denial and we do go further, we hope to leave you with the impression Mr. Trial Examiner, of the increasing frequency by Regional Officers to insert, make ways, to make cases by consolidations, every bit of nonsense, vou told me that sir, and finally I will ask you to take common sense of the fact that the charges were filed by competent counsel for the union and events here took place mostly by enlarge in June,

Excerpts of Stenographic Transcript of Hearing of December 18, 1973.

after, after the first petition was dismissed, and in short we are checking on union activities after the union was defeated.

We will show you other such nonsense.

I repeat the word, I use that word only after summing our restraint and I believe the evidence as it will unfold, will show you that the charges prepared by accountants, wound up in all sorts of preclusionary reasons, they say we discharge one man and were giving the impression of surveillance some place else.

I agree that they may make related allegations in the complaint, nevertheless some weight is to be attached to the gap between what has been charged by counsel and by what is coming out here in the complaint.

[12] You will then see my claim of make waste is just justified or not, that is all for now sir.

Judge Cohn: One question please.

These petitions as I recall related primarily to powerhouse employees or maintenance employees or that sort of thing and I gathered that the company is a store, right, and so most of the employees I would assume would be people like sales people, sales girls and so forth?

Mr. Appell: There are also sales employees.

Judge Cohn: Did the union campaign to those people or did it, was it confined to just the powerhouse or maintenance employees?

Mr. Appell: To the best of my understanding your Honor, it did not extend to the sales personnel at Respondent's store.

Judge Cohn: Are we talking about relatively a small number of employees encompassed by the union organization?

Mr. Miller: If you allow me to interpose, I can clarify the point—

Judge Cohn: They are the ones that-

F. Coletto, for General Counsel, Direct.

Mr. Appell: I believe that you could say it is a relatively small group that was involved in the sense of numbers, there are probably a couple of hundred of sales personnel with the store.

[13] FRANK COLETTO was called as a witness, and having been first duly sworn in by Judge Cohn, was examined and testified as follows:

[14] DIRECT EXAMINATION:

- Q. (By Mr. Appell) State your name and address? A. Frank Coletto, 150 Renalds Road, West Islip, Long Island.
- Q. Mr. Coletto, by whom are you employed? A. Mays Department Store.
 - Q. Where is that? A. Massapequa, Long Island.
- Q. How long have you been working in Mays? A. Six years now.
- Q. What work do you do? A. Maintenance, general maintenance.
- Q. What kind of maintenance is that? A. Could be electrical, plumbing, cement work, just generally all maintenance.
- Q. Who is your immediate supervisor at Mays? A. Paul Durande.
 - Mr. Appell: May I have these cards marked General Counsel's Exhibit 3 for identification.

(Whereupon, document referred to was received and duly marked General Counsel's Exhibit 3 for identification.)

Q. Mr. Coletto, I show you General Counsel's Exhibit 3 for identification, and ask you, is that your handwriting on the card? A. Yes.

F. Coletto, for General Counsel, Direct.

[15] Q. Did you put your name on it? A. Yes.

Q. The date that is on that card, is the date you signed and filled in that? A. That is about right?

Q. Do you recall who gave you this card? A. Mr. Cannon, John Cannon.

Q. Who is he? A. He was a night man there who worked nights.

Q. Do you remember where you were when he gave you the card? A. I was in, outside of the building at the employee's entrance.

Q. Was anyone else present that you know of? A. No, not that I know of.

Q. Do you recall what he said to you at that time? A. We just discussed the union and asked if I wanted to sign a card.

Mr. Appell: May we go off the record?

Judge Cohn: Off the record.

(Discussion off the record.)

Judge Cohn: On the record.

Mr. Appell: I propose a stipulation that General Counsel's Exhibit 3 for identification is a union authorization collective bargaining authorization card on behalf of Local 30 [16] signed by Frank Coletto and dated June 7, 1973.

Mr. Miller: Subject to my awaiting the relevancy of his last question, I will stipulate that is the card.

Judge Cohn: So stipulated, but I will agree with counsel again I don't see at the moment what the relevancy is.

Mr. Appell: To show the union organization and also to place a point of time what happened subsequently I will ask the witness about it.

Judge Cohn: All right, I don't see that you have to introduce the card, but go ahead.

F. Coletto, for General Counsel, Cross.

- Q. (By Mr. Appell) Now, Mr. Coletto, did there come a time after you signed the card that Mr. Paul Durande had a conversation with you? A. Yes, about two weeks after I signed.
- Q. Where did that take place? A. It was out in the supply house picking up some parts.
 - Q. Was there anyone else present? A. No, no.
- Q. What did Mr. Durande say to you? A. He asked if I signed the card and I said I did.
- Q. What else did he say? A. He said you are in trouble or could be in trouble or words to that effect.
- Q. Do you recall anything else Mr. Durande said at that [17] time? A. That was about all.
- Q. Do you recall anything else? A. In regards to the union?
- Q. Yes. A. Yes, I remember saying if I signed the cards, if the union could get in, that he would have to get specialized men qualified men for the job.
- Q. Did he explain that further? A. Yes, he said that if he had to pay a certain salary, he would have to get a qualified air conditioning man or qualified electrician and so forth and so on.
- Q. The remarks he made about getting qualified people was this in the same conversation? A. Mayoe two or three weeks later.
 - Q. After the first conversation? A. Yes.

[18] CROSS EXAMINATION:

- Q. (By Mr. Miller) Mr. Coletto, do you have a license, are you a licensed electrician? A. No.
 - Q. Are you a licensed plumber? A. No.
- Q. Do you have any kind of a license except a driver's license? A. That is all.

F. Coletto, for General Counsel, Cross.

- Q. Now, when Mr. Durande spoke to you and told you about [19] the qualified people, did he raise his voice? A. No.
 - Q. Did he, wag a finger at you? A. No.
- Q. Any kind of a motion which you attribute to a threat? A. No, nothing.
 - Q. Did he speak in an even voice? A. Yes.
- Q. What did you say to him when he said that to you? A. I said it sounds fair.
 - Q. How long did this conversation last? A. Five minutes.
 - Q. Five minutes? A. Yes.
 - Q. This discussion? A. Yes, five, ten minutes.
- Q. Maybe it lasted ten minutes? A. Maybe about ten minutes.
 - Q. Ten minutes? A. Yes, ten minutes.
- Q. On this June 7th on this date, about June 7th, did you say that he said there is going to be trouble or you would be in trouble? A. He said there would be trouble, words to that effect, could be in trouble or would be.
- [20] Q. Did he say you would be or could be? A. There would be trouble.
- Q. Did you ever have any trouble since that time? A. No, I never had trouble.
- Q. How long did that conversation take place? A. Five, fifteen minutes.
- Q. Five to fifteen minutes, not five to fifteen seconds? A. Well, we were just talking here and there, about you know, mostly just talking.
- Q. I am asking you the amount of time it took to get that thought across? A. Ten minutes.
 - Q. Ten minutes on that subject? A. Yes.
 - Q. There would be trouble? A. Yes.
- Q. What else did he say? A. That is all, we talked about really.

F. Coletto, for General Counsel, Re-direct.

Q. He could not have been saying ten minutes, could be trouble, there could be trouble, there could be trouble? A. He said there could be trouble, you know, in respects to like already aggrevation, about that sort of thing.

Q. Did you ever withdraw your card from the union? A. No, I have not.

Q. Did you ever have any reduction of pay since that time? [21] A. No.

Mr. Miller: No further questions.

Judge Cohn: Any redirect?

Mr. Appell: Yes.

RE-DIRECT EXAMINATION:

Q. (By Mr. Appell) Do you recall now who Mr. Durande said may be in trouble?

Mr. Miller: I don't recall any such testimony.

He said there could be trouble, he did not refer to any specific information getting into trouble and I object to the question.

Judge Cohn. Let's stop leading, sustained.

Q. Do you recall Mr. Durande saying anything else during the discussion where he mentioned there could be trouble? A. No, that is all I can recall mentioning the word trouble.

Q. Do you recall him making any mention of the maintenance employees? A. Never, never.

Mr. Appell: Nothing further.

Mr. Miller: Nothing further.

Judge Cohn: You may be excused, thank you sir.

[22] EVELYN UPTON called as a witness having been first duly sworn in by Judge Cohn, was examined and testified as follows:

DIRECT EXAMINATION:

- Q. (By Mr. Appell) * * *
- Q. While you were employed there did you recommend hiring of employees? A. On one occasion.
- [23] Q. To whom did you make the recommendation? A. I was asked by Tom McCaffry to go up to the personnel office while Mrs. Buffalino, while she was still there.

They asked me to interview a woman, they brought in to work in the return room.

- Q. What is your recollection? A. Yes, that is.
- Q. Who is your immediate supervisor? A. Tom McCaffry.
- Did you ever recommend firing? A. He would.

About how various employees, how they were doing, their job and what have you, if I thought they should be transferred out of the return room, or they had done something that he thought they should be let go for.

- Q. Did you give employees instructions as to what they should work on? A. Yes.
 - Q. Did you train any employees? A. Yes.
- Q. Were employees in your room, when they phoned and said they were sick, who did they call? A. Me, I was there at 7:30.
- Q. Did you ever recommend any wage increase? A. Yes. Q. To whom did you make the recommendation? A. 1241

Tom McCaffry.

- Was the raise granted? A. Yes. O.
- Mrs. Upton, does Mays at Massapequa employ security personnel? A. Yes, they do.

- Q. Can you explain for us what kind of security personnel are employed at Mays? A. They have what they call 38, which is store detectives.
 - Q. Do they wear store uniforms? A. No, they do not.
- Q. Who else? A. They have a uniform guard at all the entrances and places that need security.
- Q. Who is in charge of the whole security at force? A. Mr. Malow.
- Q. Who is in charge under Mr. Malow? A. Murray Fine for the 38's and Jack McQuire for the uniform guards,—I don't know.
- Q. Before April of 1973 did you ever have occasion to see the guards or the 38's follow any employees around from Mays from place to place while they were in the store during the workday? A. Yes.
- [25] Q. Was this a—could you explain when you saw this before April, 1973? A. I became quite evident after they said, signed union cards, the 38's really work backed in receiving, we saw them on occasion, we displayed after the receiving area, after the union started they were back there far more frequently.

Mr. Miller: What are we talking about now, what room?

The Witness: Receiving area, a return charge back.

Q. Did there come a time when you saw store detectives follow a Laura Gibbins in the store? A. Yes, in fact Laura and I were generally together, we went to lunch and what have ou.

It did become prevalent very much so.

Q. You say it became prevalent, when you say it became prevalent? A. I would say about April, I noticed them, it was obvious to me about April.

Q. Before that time, did you ever see store detectives following Miss Gribbins in the store? A. This, not particularly Laura, no.

Q. How often did you see them following her, when it started in April? A. They were making a, I think they were, could not say how often, I could not, it was a constant kind of thing, back and forth, with all the people that had to do with the [26] union at the time.

Mr. Miller: Now, I will direct your Honor's attention to Paragraph 14 of the Bill of Particulars.

Judge Cohn: I do not have that before me, will you hand it to me please.

What Exhibit number would that be please?

Mr. Appell: 1P.

Mr. Miller: Look at Paragraph 14C of the complaint.

No one has the Bill of Particulars, well even 14 of the complaint—I would like to take a look at Paragraph 4B of the Answer to the Bill of Particulars and having looked at that, apart from its reflection on the Bill of Particulars practice, which I have had occasion to speak about in many cases in the past, I now move to strike all testimony of this lady on the grounds that when I ask for the particular, the paragraph of surveillance they talked from August 1, 1973 and anybody else, they did not say anything about April, May, June, nothing about July and all of a sudden they plead total discrimination regardless, they come in with August, and they have not gone into the identify of this lady.

I am talking about the relevance of that testimony, that that is precluded in and I therefore move that all that evidence be stricken on the grounds we were not given any particular warning whatever.

All he said he was talking about surveillance from [27] August 1st, nothing about April.

Judge Cohn: I don't know, I will hear from him as to respect to the Bill of Particulars, which had to do, I assume with the allegation of 881.

I will deny your motion along the grounds of the evidence might very well tend to show I am not sure at this point in the proceeding, so—some sort of surveillance of company personnel with respect to Miss Gribbins in relation to her case, that is 883 allegation, so as I say I will hear from him as to whether or not he at this point is offering such evidence in support of any 881 allegation.

I will deny the motion on the other.

Mr. Appell: Your Honor, I would be in accord with your ruling of course the Bill of Particulars does not refer to a period earlier than August, as to the store detective, I should like to request that I defer any further discussion, perhaps pending a discussion, to amend the complaint in light of the witness' testimony.

Judge Cohn: I will deny any motion at this point. I do not look kindly to any amendment—

Mr. Miller: Are you denying the motion in total? Judge Cohn: To strike the testimony, that is the only motion I am denying, that was your motion?

Mr. Miller: I will make another motion, all testimony having to do with any surveillance prior to August 1st.

Judge Cohn: I indicated I would not grant that motion because it may have to do, have to do with the 883 allegation, just because something is not actively conducted, it is not alleged, there is 881 violations and it does not mean it is subject to be stricken.

It might be provable in 883.

Mr. Miller: Tell us whether it is proper—
Judge Cohn: He has indicated at that at least the present state of the pleadings, he cannot offer that in

support of 881 allegation, in view of the Bill of Par-

Proceed.

[32] Q. Mrs. Upton, were you employed with Mays, while you were did you ever receive a handbook? A. Yes.

Q. Were you ever given any oral instructions by any officials of Mays as to any rules of solicitation? A. Not that I remember.

Q. Any rule relating to talking with other employees on company time, were you ever made aware of that orally? A. No.

Q. Do you remember when you got a rule book? A. When I was first hired.

Q. Does that have any mention of solicitation rule if you [33] recall? A. I do not remember.

Q. Did you ever see any posting by any company bulletin that there was to be some solicitation? A. No.

Q. To your knowledge, did anyone solicit information, any, for any course of organization? A. Yes.

Q. Who did that? A. The MEA.

Q. What is that? A. The Mays Employees Association.

Q. Who is the head of that? A. That changes each year, they vote for whoever they want to.

Q. What kind of solicitation goes on during a work day for MEA? A. They want to raise money for various things, they do, sell chances and the—we had people solicit for deaths, for flowers and what have you.

Judge Cohen: For what? The Witness: For deaths.

Q. Can you describe the practice of Mays Employees during the work day with regard to talking to fellow employees aside from actual work tasks?

[34] Mr. Miller: Objection, is she skilled to describe what she can see.

Judge Cohn: I will allow her to testify.

Q. As to what you know personally, what is the practice of the employees in regard to talking to fellow employees? A. I have had no objection to it, we work and talk together, during the course of the day, whether it concerns work or whether it was just some passing things concerning our children or families.

Q. Were you ever told to refrain from any personal conversation? A. No.

Q. Did Mr. McCaffry ever instruct you to tell your employees they were not to talk? A. No.

Q. Did Mr. McCaffry ever ask your opinion to transfer any employees from one job to another? A. Yes, from what I was doing to another area in receiving he did.

Q. Who was considered by the employees and by you to be in charge of your room during the day? A. I was because he was not—that was part of receiving and that particular part I was in charge of.

Q. How many employees were under you? A. That varied, when I left there were four of us, one had [35] left when I left.

[37] Q. Did these detectives ever watch over Laura Gribbins when you were eating lunch with her? A. They would be in there while we were having lunch, yes.

Q. What were they doing while you were there? A. Generally eating lunch.

- Q. Was this the normal time to eat? A. I have no idea. They had their lunches, I have no idea.
- Q. When Laura Gribbins was followed in the store, when you were present, how far away were they from you? A. On occasion, close enough to overhear the conversation we might have had which is within a fair range.

CROSS EXAMINATION:

Q. (By Mr. Miller) * * *

[38] Do you know whether there is a large pilferage problem at Mays? A. In Mays?

[39] Q. Yes. A. I would assume it is normal, as it is in any store.

Q. Do you know how big Mays is? A. Yes.

Q. How many square feet there are on the floor? A. I cannot tell you that.

I don't know by square foot, display could tell you that. I could not.

Q. Would you use the word large in describing the floors? A. The floor area?

Q. Yes. A. Yes.

Q. How many floors are there? A. There are three with the basement.

Q. Now you only said you knew three store detectives? A. There had to be more than that, I am telling you what I know.

Q. Are you—you recognize only three of them? A. I only know three, I had no association with store detectives, my job did not bring me out onto the floor.

[41] Q. Did you see them watching Laura Gribbins? A. I did.

- Q. You saw them increase watching of Laura Gribbins? A. Yes.
- Q. You saw them in April? A. I would say April, shortly before I was told about the union because we spoke about why were the 38's in that area so very often.

It was unusual, we could not understand it, it was after that I heard about the union and connected it.

Q. You are sure this was April? A. It was before I was told about the union.

I was told about that in May.

Q. Before you came to the conclusion you were told in April? A. I was not told anything in April.

I am speaking about the surveillance in April.

[43] A. They would follow us through the store.

- Q. Follow us? A. Yes, if I was on my way to have lunch, they would be behind us.
- Q. Did there—did you complain about this? A. You don't complain to Mays about very much.
- Q. I see, you thought it would be useless to complain? A. It is useless to complain.
- Q. Now, how many times did this luncheon watch continue, this business of watching you while you were going to get lunch? A. At lunch and the lady's room, this went on right up until I was let go.
- [44] Q. When did you cease being an employee of Mays? A. June 16th.
 - Q. June 16th? A. Yes.
- Q. By the way, did you join Local 30? A. Not until after, until after I ceased being an employee.
 - Q. After, I see. A. That is right.

- Q. When did you join Local 30? A. July.
- Q. I beg your pardon? A. I said in July.
- Q. Now, can you—you cannot fix a day more previously than that? A. There was a union meeting, I believe it was July 21st.
- Q. Before that you had no contract with the union? A. I knew the people that signed cards.

[45] Mr. Miller: I would at this moment, draw your attention your Honor, to Board's Exhibit 1G which is the charge filed by Miss Laura Gribbins on August 23, 1973 in which Miss Laura Gribbins filed the charge on behalf of herself and on behalf of employees, Evelyn Upton, which set fourth that Miss Upton—Mrs. Upton was discharged on June 16th for union activities.

Mr. Appell: Your Honor, may I be heard?

Judge Cohn: Why are you calling my attention to it?

Mr. Miller: Because I want you to see Laura Gribbins filed a charge for this lady and she said she was discharged on June 16th and never commenced until much later.

Judge Cohn: So General Counsel is not proceeding on that charge.

Mr. Miller: I know, but I think it lends—I wish to surround this testimony—

Judge Cohn: Go ahead.

[49] Judge Cohn: May I ask a question on that point, Mr. Miller?

Mr. Miller: That is all right, sir.

Judge Cohn: How did you know that they were not watching you while they were watching?

The Witness: 1?

Judge Cohn: When you were with Laura?

The Witness: I had not signed a union card at that time, we just associated the two things together, that was the union.

Judge Cohn: I see you assume they were watching her because you knew she had signed a union card at that time?

[50] The Witness: That is right.

Judge Cohn: Thank you.

Q. (By Mr. Miller) You knew she signed a union card in April of '73? A. I knew she signed a union card.

I don't know when it was. I do know the date.

Q. Well. A. I knew she had been asked to sign a union card, when she signed it, I do not know.

Q. Mrs. Upton, I believe, it is correct to say you testified this increase became more notable to you in April? A. That is right.

Q. I believe you told His Honor you do not believe they were watching you because you had not signed a union card at that time? A. That is right.

Q. I asked you if you know whether Laura signed a union card in April? A. I knew she signed a union card. I don't know when.

Q. We are talking about the increase point sometime in April? A. I don't know when she signed the card.

I know there are other members in the building that signed it. I know in display they were able to sign it, they would come under this union, I have assumed everyone was [51] suspected, all I know Laura signed the card the date I do not know.

Judge Cohn: Mrs. Gribbins was considered maintenance?

The Witness: No, she was a display, they were included in the union.

Judge Cohn: When were they included, the display department?

The Witness: Yes, they were.

- [53] Q. What about private conversations, that had nothing to do with work? A. There was no one to tell me, I could not or should not.
- Q. You don't remember having that admonition printed on any book that you got? A. It may have been, I don't remember.
- Q. I see, and did other people in your department, did you see them talk and have personal conversations? A. Yes.
- Q. All the time? A. As in any working day with any person.
- Q. Long and lengthy conversations? A. I don't know whether they were lengthy or not.
- [54] Q. They interrupted their work and had a conversation? A. In the job we were doing, you would work and talk at the same time.
 - Q. You could do that? A. Of course.
- Q. Were you, did you, were you under the impression you were authorized to stop work and engage in personal conversations? A. We don't have to stop work and engage in personal conversation.
- Q. Were you under the impression that you were able to stop work and engage in personal conversation? A. No.

Q. * * *

Did you or your people under you to stop work and engage in personal conversation? A. No, there was no reason to.

Q. You would not permit it if you saw it? A. Because there was no reason to. It was not necessary.

They could work while they talked, there was no reason to stop working.

[59] RE-CROSS EXAMINATION:

Q. (By Mr. Miller) You know they were following you? A. No, I don't know they were following me.

Q. I beg your pardon.

I believe the question was asked if you were about, aware [60] of being followed and you answered yes. A. Not me, no.

- Q. They were always following Laura when you saw them? A. When I was with her.
- Q. You know it was Laura, would you please point to the lady or ladies who was doing the following, if in fact they were, with respect to going up to lunchroom? A. Margaret and Marie.
- Q. Margaret follows up to the lunch room, then Marie were they ever together? A. I don't ever—on the floor, not together there, no.

Judge Cohn: What do you mean?

The Witness: I would see them occasionally on the floor with people in the store, as far as this is concerned, no, I did not see them together.

- Q. About following Laura Gribbins? A. No.
- Q. You saw them one at a time? A. That is right.
- Q. When you were going up to the lunchroom from the basement, is that true? A. Yes.
- Q. Excuse me, I will interrupt myself, there—the receiving room was in the basement? A. That is right.
- [61] Q. The display room is in one area of the receiving department in the basement? A. That is right.

- Q. The lunchroom is on the— A. Third floor opposite end.
- Q. So sometimes Margaret would be the one who was following Miss Gribbins up to the lunchroom and sometimes it would be Marie? A. Yes.
 - Q. You saw them watching Miss Gribbins? A. Yes, I die
- Q. That is how you knew they were following her? A. Y
- Q. I beg your pardon? A. They were not sneaking around, they were following out right.
- Q. They did not want to look as if they were sneaking around? A. They were not trying to hid behind things, they were actually following.

Judge Cohn: They were not hiding behind pilers.

- Q. They made it quite obvious they were following her? A. Yes, yes.
- [62] JOHN CANNON called as a witness, having been first duly sworn in by Judge Cohn, was examined and testified as follows:

Direct Examination:

- Q. (By Mr. Appell) State your name and address? A. John J. Cannon, 169 North Walnut Street, North Massapequa, New York.
- [63] Q. Mr. Cannon, were you ever employed by J. W. Mays Incorporated? A. Yes, I was.
- Q. From when to when? A. Either December 12 or 11th, 1972 until approximately I cannot say the date, in October, 1973, that was the termination date.
- Q. What job did you perform at Mays? A. I was a maintenance at nighttime.

- Q. What kind of work did you perform as a maintenance employee? A. I took care of the air conditioning, heating, lighting and whatever emergency work on elevators and so forth, someone would get trapped in an elevator or something of that kind and call.
- Q. What were your hours of work? A. 5 to 9:30, Monday through Saturday with the exception of Friday which was, from 5 to 10, the store closed, the store closing hours.
- Q. In what store did you work? A. In the Massapequa store.
- Q. Who was your supervisor while you were employed with Mays? A. Paul Durande.
 - Mr. Appell: May I ask this card be marked as General [64] Counsel's Exhibit 4 for identification purposes.

(Whereupon, above referred to document was received and marked General Counsel's Exhibit 4 for identification.)

- Q. Mr. Cannon, at the time you went to Mays to work were you a member of any labor organization? A. Yes, I was a member of Local 30.
- Q. Did there come a time after you went to Mays that you contacted a union representative of Local 30? A. Yes, I did.
 - Q. When was that? A. Late in December of 1972.
- Q. Do you recall who you contacted? A. I spoke to Joe Longo.
- Q. Do you remember what you said to him at that time? A. I told him of the set up in the store and evidence the other people who wanted, thought it was right for union organization.
- Q. Did you contact Mr. Longo again after December? A. Yes.

Q. Do you know when that was? A. I contacted him a couple of times, but I contacted him in February.

Q. Do you recall what you said to him at that time? A. I told him I would like to have cards and like to organize.

[65] Q. Did Mr. Longo give you any authorization cards for Local 30? A. Yes, he did.

Q. Do you remember when that was? A. That was about the same time.

Q. Do you remember where he gave you the cards? A. He gave them to me at—out in the parking lot.

Q. Parking of what? A. Of the Mays store.

Q. I show you General Counsel's 4 for identification, and ask you if that is your signature that appears on the card? A. Yes, it is.

Q. Did—the date on the card, is that the date you signed it? A. Right.

Q. Is there any handwriting on that card which is not your own? A. No, none.

Judge Cohn: What date is that?

Mr. Appell: March 9, 1973 your Honor.

May we go off the record.

Judge Cohn: Off the record.

(Discussion off the record.)

Judge Cohn: On the record.

[66] Mr. Appell: I propose to stipulate that John Cannon signed a collective bargaining authorization card on behalf of Local 30 on March 9, 1971.

Mr. Miller: Subject to the usual reservation as to relevancy I stipulate it is his card.

Judge Cohn: Thank you.

Q. Did there come a time Mr. Cannon when you described—distributed blank authorization cards to any employees? A. Well, I had, gave them to the men to sign, yes.

- Q. Which men did you give them to? A. All the men in the maintenance department with the exception of one.
- Q. How many men did you give cards to? A. Six out of the seven.
- Q. Where did you give them these cards? A. In the parking lot, again from the trunk of my car.
- Q. Was this on one occasion? A. On separate—some at one, a couple at one time, then on different occasions I gave a number of them.
 - Q. Did any of them return cards to you? A. Yes, they did.
- Q. About how many returned them to you, if you recall, personally to you? A. I got all of the six out of the seven.
- Q. Do you remember when those cards were returned, signed [67] to you? A. Well, they were, in March.
- Q. Do you recall, it was, when it was that the employees returned the cards to you? A. Yes, in the parking lot again.

Judge Cohn: Is this gentleman alleged discriminatory?

Mr. Appell: No.

Judge Cohn: Why is it necessary to go into this, there is no alleged discriminatory action until June.

Mr. Appell: This is to show the scope of the union organization campaign and that that campaign did take place outside of the Respondent's premises.

Judge Cohn: This is no question, there is no question as of March, there—that Respondent had to know there was an organization campaign carried on on behalf of these men.

I mean there is no dispute about that.

I don't know why you are going into such specifics about how he got the cards, who he gave them to and so forth, also knowledge of the company, is shown, anyway that they have knowledge in March.

I do not understand this.

- [68] Q. Did there come a time Mr. Cannon when Mr. Durante had any conversation with you and other employees? A. Yes.
- [69] Q. Do you remember when this was?

When such a conversation took place? A. In March, we had a discussion taking place and I entered from work one evening.

- Q. Where were you sitting, situated when you spoke with him? A. In the shop area.
- Q. Was anyone else present with you? A. All the employees were working that day, that were there.
- Q. Do you remember who they were? A. Well, it would have been Brandt, Izzo, Gambino, Coletta and Bratabush.
- Q. Do you remember what time that was? A. Approximately 5:00 o'clock, just as I entered, work time.
- Q. Was this before the cards were signed or after, if you remember? A. This was after the cards were signed.
- Q. What did Mr. Durante say? A. That he was against the union and that it would not be to our benefit, in other words, that the effect to join the union it would not be to our interests.
- Q. Do you recall anything else he said at that time? A. Just that his experiences with unions were bad once, [70] that he had been passed over for a promotion while he was a member of an electrical union I believe.
- Q. Did there come a time, do you recall anything else at that discussion? A. No, no, particularly no, not at the moment.
- Q. Did there come a time thereafter when you learned that the National Labor Relations Board issued a decision? A. Yes
- Q. Do you remember when that was? A. I don't remember, it had to be, the date that the decision was given, because

I was, whatever the date the decision was given, I was called up.

- Q. Was that the first decision or the second one? A. That was the original decision, the first.
- Q. Thereafter, did you have a conversation with Mr. Durande this afternoon? A. That afternoon I called Mays and I asked him, I asked to talk to one of the men, who signed a card.
- Q. Who was it that answered the phone? A. Paul Durande.
- Q. What time was this approximately? A. Roughly 2, 2:00 o'clock, somewhere in that neighborhood.
- Q. What did you say to Mr. Durande and what did he say to you? A. I asked for one man, which one I don't know, and he not [71] being available, I asked for another.

Paul said he was not available either, but could I give him a message.

Then I explained to him that the decision has been rendered.

Q. After that decision what did you do next? A. I met the fellows that afternoon to give them the word personally as to what had happened.

I met them outside as they came out of work.

- Q. What time was that, about? A. Oh, well, some of them started about 4:00 o'clock. I was there much earlier than that, about 3:00 o'clock.
- Q. Was any—did anyone from the company officials observe you talking to the men to your knowledge? A. I could not particularly say at the moment.
- Q. Did there come a time thereafter when you met again with any of the employees in the parking lot? A. Yes, the fellows wanted a little more elaboration on the decision and we met again in the parking lot with Joe Longo and the three—307 representatives.

Q. How many employees were present at that time? A. Well, as they finished work, they joined the group,—

Judge Cohn: You mean the seven you talked about?

A. One, one who stayed in there, that I relieved, he was not there, but the other men came out individually, two [72] or three o'clock and then one, maybe at 4:30 until—

Judge Cohn: How many altogether?

A. A total of six that I talked to.

Judge Cohn: When was this?

A. Excuse me. I would like to correct that, that would be five and myself, seven in the group.

Judge Cohn: When was that?

- A. This was the day of the decision, the same day we spoke of previously.
- Q. How many men spoke with you on the subsequent occasion after the date of the decision? A. I don't understand.
- Q. After the date you met with them, when you told them about the decision, was there a meeting thereafter you had with these, any employees? A. Well, we met on two or three occasions in the parking lot to discuss it after then.

O. I see.

Do you remember the dates or approximate dates of those meetings? A. No, I could not say that.

- Q. Did there come a time while you were employed with Mays that an assistant chief engineer quit the job? A. That was when I originally, when I was originally hired. There was an assistant to Paul Durande there.
- [73] Q. Do you remember his name? A. No, Johnny—no I don't, he left the job, after I had been there approximately ten days, two weeks.

Q. Did anyone ever discuss the position with you thereafter? A. Well, the men in there, there was a general discussion as to who would be promoted to the job, not to me in particular.

In fact, I would not have even been considered for the job.

- Q. When did this general discussion take place? A. Well, after we had signed the petition, after the union talk.
- Q. Who took part in this discussion? A. All the people, who were working that day, all the men.
 - Q. Did Mr. A. In maintenance.
 - Q. Did Mr. Durande take part in the meeting? A. Yes.
- Q. Do you recall if he said anything in that discussion? A. Appropriate to what?
- Q. The position of assistant chief engineer? A. That it would be filled while the union business was resolved, until they had decided what would be done about the [74] union.
- Q. Do you remember what time of the day this discussion took place? A. Again, my entry into work, my usual working hours 5:00 o'clock or right after that.
- Q. During the time you were employed at Mays, was that position ever filled? A. No.

Judge Cohn: I am at a loss to know why this witness was called.

Mr. Appell: This witness was called for the following reasons.

To testify to the date and scope of the organizing campaign, to testify to anti-union statements of Mr. Durande in or about March, which goes into the question of anti-union testimony, to the discussion they would not fill a position until the union position was resolved, which may be a threat of denial—

J. Cannon, for General Counsel, Cross.

[75] Mr. Miller: * * *

I have to make comments with our permission, to putting together a complaint and then asking questions and me having to relate to what particular piece of testimony which it is in the bill of particulars, and as I think it is an unfair burden and I will, with your Honor's permission, I will again have probably have something to say in any brief I will write.

Judge Cohn: I do not understand, that is the reason for my question.

I think that the only threat that counsel is replying on, is the conversation with respect to the vacancy of the assistant, whatever he was in that department.

I think that it was the only threat because that was the [76] only reason I asked the question.

Mr. Miller: The one that the witness had to remind, be reminded about—

Mr. Appell: I will ask those remarks be stricken. Judge Cohn: I can regard it or disregard it.

- Q. (By Mr. Miller) * * *
- Q. Are you still a member of Local 30? A. Yes, I am.
- Q. Now, when you gave out this card, you said you gave out six cards? A. I gave out a total, I had six signed, it was including my own.
- Q. Were you sort of the organizing man in the shop for this group of seven? A. Yes, I was.
- Q. Did you give a card to Miss Gribbins? A. Miss Gribbins?
 - Q. Yes. A. No.

J. Cannon, for General Counsel, Cross.

- Q. Did you ever talk to the union about Miss Gribbins? [77] A. Yes.
- Q. When did you talk to them about her? A. The time she had been laid off.
 - Q. You mean in August? A. Yes, in August.
- I had spoken to other people concerning her, but not directly—
- Q. When was the time you first mentioned Miss Gribbins? A. Yes, when I started mentioning her.
- Q. Yes. A. In conversation, someone had mentioned, that you know, I am getting through, this will be after the election, after we had been informed that we must have 30 people in the union, in the bargaining unit.

This was not before.

[78] Q. Where this—where did this incident take place with Paul Durande? A. In the shop.

Q. In the shop? A. Yes.

Mr. Miller: I will recite, I am forced to draw your attention to paragraph 2A of the Bill of Particulars, where the only reference made, he met Paul Durande, was supposed to have taken place in February, 1973.

Judge Cohn: Let me assure you counsel, that unless the alleged incidents, amounting to a violation of Section 8A1 informs generally to the circumstances, as set forth in the Bill of Particulars, I will make—not make a finding of violation.

Mr. Miller: I hope you take these facts into considera- [79] tion, I went through it, most of February, 1973, and all of a sudden it is June.

Let me get back to Mr. Cannon.

J. Cannon, for General Counsel, Cross.

Judge Cohn: I don't want to construe my remarks, that—

Mr. Miller: I understand your Honor.

Judge Cohn: That-

Mr. Miller: I know what you said, you mean you are going to weigh this as apart of the general way you are going to give all of the testimony.

Judge Cohn: No.

I am talking about that, if the Bill of Particulars says an alleged threat occurred, a supervisor, on May 31st and the facts say the alleged threat occurred some place else, but near the place in fact occurred, maybe two weeks before or two weeks after, that I am going to give that some consideration.

I am not going to dismiss the application, because the facts don't exactly fit the bill of particulars.

There is no leeway there.

Mr. Miller: That is what you are going to do about four months?

Judge Cohn: There again I don't know.

Mr. Miller: -

Mr. Appell: Your Honor, if I may be heard.

[80] The witness testified to an alleged threat, as we see it having occurred in March, not in June, and the Bill of Particulars refers to the period in or about February, 1973, which was in fact the best information the general counsel had at the time this reply was drafted.

Judge Cohn: What is this, was this the only incident of 8A1 that this witness testified to?

Mr. Appell: That is correct.

Judge Cohn: Are you saying that—occurred according to his testimony in March.

J. Cannon, for General Counsel, Cross.

Mr. Appell: After March 9th.

Judge Cohn: Whereas the Bill of Particulars is—asserts it took place in February.

Mr. Appell: In or about February.

Mr. Miller: We went through this. You saw, you did not construe it in March, the comment to be a threat.

It was—what he said was in March, was "It is going to be, not to your interest or things like that"—

Judge Cohn: That is what I said, only when was the remarks about the supervisor or the failure to promote, when was that?

Mr. Miller: That was in June.

Mr. Appell: As I understand it, your Honor, the witness testified that that conversation pertaining to the alleged threat, also occurred in March, after the cards were [81] signed.

Judge Cohn: That is what I am not clear on, that is the only violation of 8A1 I can go on according to be able to find out, this may or may not conform to the Bill of Particulars.

I don't know yet.

Mr. Miller: If I don't understand what time there was, he may have had a complete education, I believe he said this took place after the decision.

Judge Cohn: The record will show if that is right. Mr. Miller: The complaint alleges the decision came down May 29th, they have to be stuck with that.

Judge Cohn: The record will show on this witness' testimony as to when he says this conversation took place and if, if it now says it took place at another time I am sure you will make a motion.

Mr. Miller: Do I have any choice then to go into that.

J. Cannon, for General Counsel, Cross.

- Q. (By Mr. Miller) Now, for the record, Mr. Cannon, you heard this discussion a moment ago, by the Administrative Law Judge, counsel for the General Counsel and myself? A. Yes.
- Q. Now, we are talking about testimony which you gave, which had to do with filing—filling the job of chief engineer or assistant chief engineer.

Has this discussion first of all refreshed your [82] recollection as to the name of that assistant chief engineer who was there when you came to Mays in December? A. No, it has not.

- Q. You still do not remember his name? A. Yes, I can give his physical description, and beyond that I don't know his name.
- Q. Now, you gave out cards, you say around March, 1973? A. I gave out cards in February, I gave out cards.
 - Q. In February? A. It started.
 - Q. You gave them out in the parking lot? A. Yes.
- Q. Did you try to give that giving out secret? A. Yes, in the beginning, until in fact, all through, until we got the six people, until I had a majority of the unit, the maintenance department.
- Q. Did you tell everybody to whom you gave a card to keep it secret? A. Yes.
- [89] Q. Do you know who organized this conversation. Did you start the conversation about the assistant chief engineer? A. No, I started no conversation.
 - Q. Do you know who did? A. No.
 - Q. Did Paul Durande start it? A. I don't know.

They were in a group discussion, when I came in, then this took place, this statement took place.

J. Cannon, for General Counsel, Cross.

Judge Cohn: Tell me again shat he said?

A. He said, well we should not have the union in here because a union is no good for this store.

[90] Judge Cohn: I thought counsel was asking you about the statement concerning the promotion to have the assistant chief engineer?

A. Oh.

Judge Cohn: Is that what you are asking? Mr. Miller: Yes.

A. In this particular instant he said there would be no filling of the job because a couple of men wanted to know who would be the new chief and assistant chief rather, so they had been speaking about it and he said there would be no—while this union business is being—going on, and until it is resolved, we will appoint a chief.

Judge Cohn: Is that what you said to make the record clear, when did that statement, you say take place?

A. That took place in that same time, maybe April, about the second week in April or so.

I could not pinpoint the date.

Judge Cohn: Which took place first, the statement about whether the union would do you any good or not.

Do you any good or about the promotion?

A. Well, which came first?

I cannot—I cannot say. I know they just occurred at those, within a week of another, which came first, that I cannot say.

Judge Cohn: They did not take place at the same time?

J. Longo, for General Counsel, Direct.

[91] A. No, they did not.

Q. (By Mr. Miller) Did you have a conversation with Durande? A. If you mean by conversation, just to say hello as he passed by on the lot, I said hello, waved goodbye.

Met him on the escallator, say hello how's things.

He would let me know if something in particular had to be taken care of that evening.

- Q. Getting back to this particular conversation, did someone ask him a question before he made this reply? A. That I don't know. I was creation just as this discus and I entered the conversation, stood the sened.
 - Q. Did he say— A. I made 1 comment whatever.
- Q. Did he say the position would be filled if the union lost? A. He did not say, he said after the union question was resolved, then it would be filled.

Mr. Miller: No further questions.

Mr. Appell: No further questions, your Honor.

JOSEPH LONGO, [92] called as a witness, having been first duly sworn in by Judge Cohn, was examined and testified as follows:

Judge Cohn: State your name and address?
The Witness: Joseph Longo, 45 Ryans Lane, Westbury, New York, 11590.

Direct Examination:

Q. (By Mr. Appell) Mr. Longo, by whom are you employed? A. I am employed with Local 30 of the International Union of Operating Engineers.

J. Longo, for General Counsel, Direct.

- Q. What is your title? A. Business representative.
- Q. How long have you been a business representative? A. Five years and ten months.
- Q. Mr. Longo, did there ever come a time when you met with any employees of J. W. Mays at Massapequa Park? A. Yes.
- Q. Do you know the dates, date or dates of such meeting? A. Not offhand, not off the top of my head. I have a fairly current calendar.
 - Q. Do you keep such calendar? A. Yes.
 - Q. And you recall the dates? A. Yes.
 - Q. Do you have it with you now? [93] A. Yes.

Mr. Appell: May I ask your Honor to be permitted to refer to that diary to indicate the dates of the various meetings?

Judge Cohn: Subject to counsel's perusal.

Mr. Appell: If there is no objection from the charging person.

Q. Do you have your diary? A. Yes.

Mr. Miller: May I see what he is refreshing his recollection with?

Q. Mr. Longo, I ask you to refer to your diary and indicate the date and if you can the time and dates of meetings that you had with Mays employees? A. My first contact with Mays, at the premises, other than the telephone which I don't have a full recollection of, which was prior to the first time I spoke to John, was prior to January 30th, was the first time I met him in the parking lot.

You want me to run through it?

Q. Please. A. Then I met him again on February 5th at 6:00 p.m. in the parking lot.

J. Longo, for General Counsel, Direct.

I believe it was at that time I gave him some eards and we talked more about the operations of organizing the [94] employees.

Then I went out and met him again on February 20th at 7:00 o'clock in the parking lot.

March 1st at 7:00 o'clock I met John and a couple of the other employees there in the parking lot, and on March 9th at 4:30 I was there a little before, that from 4:30 for an hour or so.

After that we stayed there and got the rest of the cards. The rest of the cards we needed to file a petition and the petition was filed the next week.

Q. Who was present on that March 9th meeting besides yourself? A. John Cannon, there was Brandt. I believe Izzo, I am not sure whether Bradbush was there at that particular time or not and myself.

Q. Just give us the dates you met with Mays employees? A. That would be April 16th I made arrangements to bring some of the fellows in on the 17th.

[95] Q. Where did you meet with employees on the 16th? A. In the parking lot.

[97] Judge Cohn: These are all the meetings that Mr. Cannon testified about in the parking lot?

Mr. Appell: Most of them would be except that Mr. Longo is now more capable of giving precise dates that may be helpful.

Judge Cohn: Is there anymore?

A. Oh, yes.

J. Longo, for General Counsel, Cross.

Mr. Appell: Off the record. (Discussion off the record.)
Judge Cohn: On the record.

You want me to continue, how many other meetings did you have in the summary fashion?

- Q. Could you summarize about how many meetings you had in May and June? A. I am into June, how many?
- Q. How many? A. Accordingly, three meetings in June. One was with John to set up two other meetings which we had in connection with 307 in Matdans (phonetic) Tavern.
 - Q. What was the date? A. 14th and 21st.
- Q. How many people attended the June meeting? A. Between 8 and ten.

Mr. Miller: Was it a happy meeting?

- [98] A. I was buying beer.
- Q. How about the June 21st meeting, how many people were present? A. Approximately 8 to 10. Not the same 8 to 10 men.

Mr. Appell: I have no further questions.

CROSS EXAMINATION:

- Q. (By Mr. Miller) Some of these meetings that you attended at 6:00 o'clock and 7:00 o'clock at night, did you call John Cannon out? A. They were generally prearranged meetings over the telephone.
 - Q. He left work and came to the meeting? A. Yes.

[101] Excerpts of Stenographic Transcript of Hearing of December 19, 1973.

PROCEEDINGS.

(10:00 a.m.)

MICHAEL BRANDT was duly sworn and testified as follows:

Judge Cohn: Give your name and address for the record.

The Witness: Michael Brandt, B-r-a-n-d-t, 80 Cliff Avenue, Sayville (phonetic).

Direct Examination:

- Q. (By Mr. Appell) Mr. Brandt, were you ever employed by J. W. Mays? A. Yes, I was.
- [102] Q. And at what location were you employed? A. Massapequa.
- Q. When did you begin working there? A. January 8, 1973.
 - Q. Until when did you work? A. June 13, 1973.
- Q. In what department were you employed? A. Maintenance.
- Q. What kind of work did you do? A. Building maintenance, repair of all repairs in the building, lighting, mechanical, carpentry, whatever.
- Q. What were your hours of work? A. 7 a.m. to 5 p.m. Monday through Thursday, and 7 a.m. to 4 on Friday.
 - Q. What was your weekly pay gross? A. \$140 a week.
- Q. While you were employed with Mays who was your immediate supervisor? A. Paul DeRonde.
 - Q. Did he have a title? A. Building engineer.

- Q. While you were employed with Mays were you ever complimented by anyone for your work? A. Yes.
 - Q. By whom? [103] A. Mr. DeRonde.
- Q. When was that, do you recall? A. On several occasions. I can't recall specific times.
- Q. What did he say to you? A. Well, in relation to whatever job I was doing. There were several jobs that I did well and he complimented me on it. We did many things.
- Q. Did he ever criticize your work performance, your actual performance of the job and say you weren't doing a good job? A. No.
 - Mr. Appell: May I ask that the reporter mark this card as General Counsel's Exhibit 5 for identification. (Card marked General Counsel's Exhibit 5 for identification, of this date)
- Q. Mr. Brandt, I show you General Counsel's Exhibit 5 for identification and ask you is that your signature that appears where the word "name" is? A. Yes.
- Q. The date on that card, is that the date you signed it? A. Yes.
- Q. Did you fill out anything else on that card? A. Name, address and Local number.
 - Q. Local 30, Union Local 30? A. Yes.
- [104] Do you remember who gave you this card? A. Yes, John Cannon.
- Q. Do you remember when he gave it to you? A. Approximately 4:35 on March the 9th.
- Q. Where were you when he gave it to you? A. In a Mays parking lot.
- Q. What did he say to you when he gave it to you? A. Well, he explained that he was soliciting Union Local 30 and that it would be to our benefit to—asked us if we wanted to join or if we were interested in joining.

He explained a few things to us. I said yes and I signed it.

Q. What did you do with it after you signed it? A. I gave it back to him right away.

Mr. Appell: I offer General Counsel's Exhibit 5 into evidence.

Mr. Miller: Perhaps, Judge Cohn, I might be able to cut short a lot of these things by saying that at the time of Mr. Brandt's dismissal we knew or had reason to know of his union affiliation and conceded on the record. So that perhaps we might cut a lot of testimony short.

Judge Cohn: All right.

How does this sound, Mr. Appell?

Mr. Miller: It we uld help the testimony. Let us all do it.

[105] Mr. Appell: That is fine.

Judge Cohn: All right, hearing no objection GC 5 is received.

(General Counsel Exhibit 5 for identification received in evidence, of this date).

Mr. Appell: Your Honor, may we go off the record for a moment?

Judge Cohn: Off the record.

(Discussion off the record).

Judge Cohn: On the record.

- Q. (By Mr. Appell) Mr. Brandt, after you signed the card did there ever come a time when you engaged in any union meetings? A. Yes, I did.
- Q. Do you remember how many there were offhand? A. Offhand I would say six or seven meetings.
- Q. Did there come a time when there were any such meetings in a parking lot that you attended? A. Yes, there were six or seven meetings and they were held in a parking lot

where we park our cars after hours with several people involved.

Q. Did you speak at these meetings? A. Yes, partially.

Q. Do you remember what you said? A. Well, the only statement in effect was that we were [106] underpaid and poorly treated and that the union would help us gain some of our rights as people and employees.

Mr. Miller: I object to all this as being not binding in any way upon the respondent.

Mr. Appell: Surely, your Honor, this is relevant evidence as to the union activities of the alleged discriminatee.

Judge Cohn: I don't know what value it is if it doesn't come within the knowledge of the respondent, if you don't have any way of showing that it did.

Mr. Appell: Your Honor, you may ultimately draw certain inferences that certain things did come to the attention at a particular time of the respondent and, moreover, we are seeking to show the union activity of this witness.

Judge Cohn: Well, I will allow you to indicate as briefly as possible the activities of these witnesses with respect to attending union meetings or soliciting, but insofar as if they do not show any knowledge, if you don't show any knowledge on the part of the respondent then I suggest that you hurry through them rather quickly because they have small probative value.

Q. (By Mr. Appell) Do you recall an NLRB decision being issued on or about May 29th? A. Yes, I do. I was at the meeting—at the hearing.

[107] Q. You testified at that hearing; is that correct? A. I did.

- Q. After that meeting did there come a time when you distributed any union authorization cards like the one you signed? A. Yes, I did.
- Q. Do you remember when you did that? A. On several occasions. It wasn't all at once. It was a couple of days, one day. Two one day, three another day. It was spread out over a week and a half, two weeks.
- Q. This was after the decision? A. As I recall the decision came down that the union had to produce more personnel to be allowed the right to work in the store, and we were told by this decision, the written decision that we had to include the porter or housekeeping staff, and so after I was told this and after we were told to get signatures, I proceeded to speak to custodial staff, housekeeping personnel in relation to the union and the benefits involved, and if they would be interested in signing a card for the union.
- Q. Where did you speak to these people about signing cards? A. Various places. Any time. Lunch break or coffee break, in the morning, going up the escalator or maybe I was walking up a flight of stairs with somebody.

Wherever I was passing or happened to be not working.

- [108] Q. How many cards did you distribute to employees? A. I believe the count is—was 17 cards, 18 cards, something very close to that.
- Q. How many cards were returned to you signed, do you recall that? A. That many. Oh, I'm sorry. There was about 25 cards given out. I had gotten about 19 signed and returned. The others were not returned for different reasons.
- Q. Those that were returned, were they returned to you personally? A. Yes, they were.
- Q. What did you do with them when you got them? A. I turned those cards over to John Cannon or Mr. Lunger wherever I could get to it fastest.

- Q. Do you recall whether Mr. Fazio signed a card? A. Yes, he did.
 - Q. How about Mr. Murphy? A. Yes, he did.
- Q. Who were those gentlemen? A. Mr. Murphy was employed as a housekeeper custodian porter, whatever you wish and Mr. Fazio was employed as a carpenter's assistant in the Display Shop.
 - Q. Do you know Mr. Harry Schob? A. Yes, I do.
- Q. Who is he? [109] A. I believe at the time he was the head custodian or head porter.
- Q. Did you ever speak to him? A. Yes, I spoke to him on many occasions.
- Q. Did you ever speak to him about signing a card? A. Yes, one day we were riding up the escalator, it was early in the morning and we both happened to be on at the same time and I asked if he knew of the union activities and he said yes.

I asked him if he would like to sign a card and he said yes, and I said, "Well, you can sign it now", and he said, "No, I have to take it with me."

I says, "All right, I will have to get you one. I don't have one" and I didn't give him a card.

- Q. Do you remember what date this was or the approximate date? A. I would say—I can't—the best of my recollection it was the first week in June, around the 6th or 7th, somewheres in there.
- Q. After that discussion did you see Schob after that? A. Physically?
 - Q. Yes. A. Yes, I saw him about an hour later.
- Q. What was he doing? A. He was speaking to Mr. Kaye down at the foot of the [110] escalator.
 - Q. Did they see you? A. I assume they did.
- Q. Do you know if they did? A. Well, Mr. Kaye looked up the stairs, up the escalator. Whether, you know, I was there and he was looking at me so I would assume he saw me.

Judge Cohn: What was the time frame of your distributing these 25 cards and getting back 17 or so that you testified about?

The Witness: The length of time?

Judge Cohn: About when was that?

The Witness: That would be right after the decision was handed down, May 29th through June 13th.

Judge Cohn: All right, thank you.

- Q. (By Mr. Appell) Did there come a time after the NLRB decision came down when Mr. Paul DeRonde spoke with you? A. Oh, yes, sure.
 - O. Was there- A. We have had-
 - Q. Go ahead. A. We have had many conversations.
- Q. Do you recall what days they took place as best you can? A. I believe the following day after the decision came down [111] Mr. DeRonde knew of the decision, that the decision had come and the following day we discussed the decision and other things.
- Q. Where did Mr. DeRonde speak with you? A. In his office. He had a little office up by the work shop by the second floor and we would meet in there once in a while.
- Q. Did you have more than one conversation with him?

 A. Oh, we have had conversations—
- Q. Between the time of the decision, you learning of the decision and the time you were fired. A. Yes.
- Q. Do you remember what happened at each specific conversation? A. Well, each specific one, no.
- Q. Do you recall what was said at these conversations? A. Well, one—the following day, I think it was the following day, I'm not sure, we discussed the decision and the fact that regardless of whether the union won or lost we were going to get fired.
 - Q. Who said that? A. Mr. DeRonde, because I think it

was said as to the fact that Mr. Katz had a hate for all of us and that he was going to get rid of us one way or the other as it went.

[112] Q. Did he explain further on that? A. I'm trying to-

Q. Do you recall what else Mr. DeRonde said during these conversations between the time of the decision and your discharge? A. I recall discussions but I can't place the times when we had the discussions.

Judge Cohn: Tell us what the discussions were. What did he say and what did you say.

The Witness: Well, we have had discussions on the union as a whole.

Judge Cohn: You said that three or four times, Mr. Brandt. I still want to know what he said and what you said.

The Witness: All right.

It was one discussion in particular, we discussed the fact that how if he—that he could get the union in the store if he wanted to, if he was compensated properly by the union. He could in one way or the other get the union in the store.

Judge Cohn: He meaning-

The Witness: Mr. DeRonde. There was—there was—that's what I'm saying, we had many conversations.

The gist of them all were the fact that if he wanted to or if he was allowed to he could get the union in and—[113] Judge Cohn: What did you say?

The Witness: I really didn't acknowledge—I mean, you know, I understood why he couldn't do it.

Judge Cohn: You said that you had some discussions with Mr. DeRonde about this decision that came down and you haven't told me anything of what

the discussions consisted of other than Mr. DeRonde saying that he could get the union in if he were properly compensated.

What else did he say? What did he say?

The Witness: Well, I'm trying to word it the best I can. I don't know how.

When the decision came he knew of the decision. He told me or us, whichever the case there was. Sometimes there were three or four of us around, sometimes myself.

Anyway-he-let's see.

I can't really—I'm trying to phrase it properly.

Judge Cohn: You don't have to. The phraseology isn't important. What is important is what was said.

The Witness: Well, I think I covered that.

- Q. (By Mr. Appell) Do you recall anything else that Mr. DeRonde said to you? Do you now recall anything else that Mr. DeRonde said to you? A. Wait. At the minute I can't recall anything.
- Q. Do you recall any mention of the post of assistant engineer? [114] A. Oh, that's—okay. There was a discussion after the decision. I was—Mr. DeRonde spoke to me earlier in the year about taking this position as an assistant engineer to him and that the decision on that would have to wait for a while for some odd reason or another.

After the decision from the Labor Board Mr. DeRonde told me that because of the involvement with this union that all chances of advancement for any of us would stop and that my advancement to the position as the assistant had come to a stop and there would be no more chance of that.

Q. When did he first speak to you about the promotion to assistant engineer? A. Oh, that was in March, early—about March, the end of February.

- Q. He had this discussion with you about how long after the decision was known to you, do you recall? A. A day or so.
- Q. Do you recall anything else that Mr. DeRonde said to you in this period? A. The only thing I recall is the fact that we were all being fired one way or the other.

He said if the union did get in we would be let go anyway because then the store would require better skilled employees.

[115] Judge Cohn: Who else was present? You said several of you were around there. Who else was present?

The Witness: Well, there was—I can remember Mr. Roudebush and Mr. Collito were available at the time.

Judge Cohn: They are employees?

The Witness: They are employees in the maintenance department and Mr. Izzo I think was there. I cannot pinpoint any exact.

- Q. Do you recall anything else that Mr. DeRonde said in those two weeks? A. I'm having a lot of trouble recalling.
- Q. Do you recall any mention of Mr. Cannon? A. Well, Mr. Cannon was brought up many times. Mr. Cannon, what we did, it was made mention that he knew or Mays knew that Cannon was a plant for the union and that regardless of what happened that Cannon would wind up coming out ahead anyway because if he got fired from the place he would just go back to a union job.
 - Q. Who said that? A. Mr. DeRonde.
- Q. Do you remember when he said that? A. No, I can't say exactly what day.
- Q. Was it in that period or in a different period? A. Well, it was in—once in that period and prior to that it was also known and mentioned.

- [116] Q. When did DeRonde mention it prior to the decision? A. Oh, it was between the date of the hearing when we went to the hearing and the date of the decision, within those two weeks there.
- Q. Did there come a time when you had a discussion with Mr. Katz? A. Yes, twice.
- Q. Do you remember the first such discussion you had, what date it was? A. I believe the first discussion was June 7th.
- Q. What time was that, about, if you know? A. If I recall the time I believe it was afternoon, just around noontime. I don't recall.
- Q. How did this meeting come about? How did you come to meet with him? A. Well, I was working doing the job in the shop area around. I was down in the carpenters shop making some framing and I got a call and Mr. DeRonde wanted to see me by Personnel.

So I immediately went up to the Personnel Department which I was to wait for Mr. DeRonde.

While I was waiting for him Mr. Kaye's office is right there and I saw the door, Mr. Kaye saw me and told me to come in and Mr. Katz was sitting at another desk.

- [117] Q. Did Mr. Katz speak to you at that time? A. No.
- Q. What did you do then? A. He told me to sit down and we waited on Mr. DeRonde to show up.
- Q. Did he show up? A. He showed up within a minute or so.
- Q. Then what happened? A. Then Mr. Katz said to me that "Mr. Brandt, we know that you were organizing."

I said, "Organizing what?"

He said, "We know that you were organizing a union and involved in union activities."

I said I didn't know anything about it and he said to me that—I'm trying to recall his words:

"We know you are involved in union activities" and I denied it.

I said I didn't know and he said to me that "We don't want you involved in it, we know you are. We don't want you involved in it. We don't allow it."

Q. Do you recall what else Mr. Katz said to you? A. Just a minute, please. Just slipped my mind. I guess it is nerves.

Anyway he said to me he did not allow it, he did not want me soliciting union on company time. It was against [118] the rules, 1 believe he said.

And I denied everything and he said, "Come on, Mr. Brandt, let's talk straight. Let's not stab each other in the back. You are."

I said no again and he said to me, "Well, we know you are and if you are caught talking to anyone or soliciting anybody for the union we are going to have to let you go."

And so I turned to Mr. DeRonde and I asked him if he was threatening me.

- Q. If who was threatening you? A. Mr. Katz was threatening me and Mr. Katz turned back to me and said, "Yes, if you want to put it that way, yes, I'm threatening you." And—
- Q. What happened next? Did you answer that? A. I'm trying to think. I don't believe I answered that. I just said that—I didn't answer.

I just asked—I asked him if I was finished, if I could go back to work.

- Q. What did he say? A. He said, "Yes, go back to work".
- Q. After that did you see Mr. Katz at any time?

Judge Cohn: Just a second. You testified you had two conversations with Mr. Katz; is that right?

The Witness: Yes, sir.

[119] Judge Cohn: And this one you just told us about. That was on the 7th.

The Witness: Yes, sir.

Judge Cohn: When was the second one?

The Witness: On the 13th, the day I was fired.

Mr. Appell: We will get to that, your Honor. There

are some intervening events before that.

Q. After that first conversation with Mr. Katz did you see Mr. Fazio? A. Yes. Mr. Fazio came up to the shop and informed me that he was just fired, and that—

Q. What did you say to him? A. Well, I told him not to sign anything. I told him to go directly to Unemployment and I would notify the lawyer in the union.

Q. Did there come a time when you spoke with Laura Gribbins? A. Yes, many times, but after that occasion—

Q. Do you remember in this particular period if you spoke to her? A. I think it was the 11th of June.

Q. Do you remember what day of the week it was, if you remember? A. No, I don't.

Q. Do you remember—[120] A. I think it was a Monday morning, early, early Monday morning.

Q. What time, about? A. 7:30, quarter to.

Q. Where did you see Laura Gribbins, Mr. Brandt? A. I was—myself and another man were going down to the basement.

Q. Who was the other man? A. Frank Collito and we were passing—we got off the escalator and we were passing through Hardware to get to the employees entrance which you have to do and Miss Gribbins was coming in at the time and we met right by Hardware there and—

Q. Did you speak with her at that time? A. Yes.

Q. About how long did you speak with her? A. A minute, two minutes, brief.

Q. What did you say to her and what did she say to you as best you recall? A. She said something about a union, wanted

to know if there was a meeting or anything like that and I told her yes, there was a meeting and I believe I told her where it was and I believe that was about it.

> Mr. Miller: Of course I have been sitting here letting these things go in. I have to object to this because it [121] is going beyond any relevance. Why are we bound by any conversation he had with Miss Gribbins?

> Mr. Appell: The ensuing testimony will demonstrate that, your Honor.

Judge Cohn: I suggest that if you say that you have a conversation with Miss Gribbins, also you can show that it was overheard by someone in the respondent as to what was said and that is absolutely meaningless.

Mr. Appell: We are about to go into that, your Honor, at this very moment.

- Q. After this discussion with Laura Gribbins did there come a time when Mr. DeRonde spoke with you? A. Yes.
 - Q. When was that? A. About nine o'clock.
- Q. Where was that? A. I was on coffee break in the cafeteria, second floor.
- Q. With whom were you at the time? A. Frank Collito and Tom Izzo.
- Q. Did Mr. DeRonde come over to you or did you go over to him? A. Mr. DeRonde came into the cafeteria very outraged.
- Q. What did he say to you? A. He said to me something to the effect that he has got complaints that I am not doing my job and that I'm—[122] that people are complaining, that he is getting complaints that I'm not doing my work and that he is very, very annoyed, and I don't think I said anything to him and then he left.

It was a matter of a minute.

- Q. Did there come a time after that when you went to DeRonde's office? A. Yes.
- Q. When was that? A. Right away. I finished my coffee and we—Frank and I, Mr. Izzo, went right in to Mr. DeRonde's office because I don't like these things.
- Q. Did you speak with Mr. DeRonde? A. Yes. I asked him-
- Q. Excuse me, what did you say to him and what did he say to you?

Mr. Miller: Just a moment. He was giving an answer. I don't think we ought to interrupt.

A. (Continuing) I was ahead of him, I'm sorry.

I said to him, "Why did you get all over me like that? Why were you hollering at me?"

And he explained to me that he had to do that because we were seen gallivanting around the store not doing our work and he had the complaint and he had a file of complaints on me that I wasn't doing my job.

[123] Mr. Miller: Do we have the date of this and the time?

Judge Cohn: He said it was about nine o'clock on June what?

The Witness: 11th.

Q. What else did Mr. DeRonde say, if you recall, at that time? A. He said he had to make out a complaint or a form as to my not doing my job properly in the morning hours and I asked him why.

He said because I was seen around the store doing nothing, not doing my job and came to find out that I was seen by Mr. Kaye and Mr. Zayle as I understand talking to Laura.

Judge Cohn: Mr. Brandt, we just want to know

what occurred in the conversation between you and Mr. DeRonde.

The Witness: This is the conversation.

Mr. Appell: Your Honor, I believe that is what he is giving.

The Witness: This was the conversation.

Judge Cohn: I didn't understand that last part.

A. (Continuing) Mr. Ronde was teiling us that we were seen not doing our jobs.

Judge Cohn: Did he mention the names of the gentlemen you just mentioned, Mr. Katz or—
[124] Mr. Appell: Mr. Kaye.

A. (Continuing) Mr. Kaye and Mr. Zayle. Did he mention it? Sometime during that conversation we got to that point.

Judge Cohn: Go ahcad.

A. (Continuing) And they had seen us.

Q. Did he explain how they had seen you or when? A. Well, not exactly at that time. Maybe a few minutes later.

He said that Mr. Kaye was down in the Hardware Department behind the door and Mr. Zayle was somewhere else and that they observed us.

- Q. Do you recall if he mentioned what time this was that they observed you? A. Yes, it was 7:30 in the morning.
- Q. Did Mr. DeRonde say that? A. He didn't say the exact time but he said that they obser ed me talking to Laura Gribbins which was at 7:30.
- Q. You testified something about a report. You mentioned a report. A. He wrote out a report to the effect that I was not doing my job and that he had to turn it in to Mr. Katz or Mr. Kaye.
 - Q. Did you see him write out any report? A. Yes, I did.

- [125] Q. Did there come a time thereafter when Mr. DeRonde spoke to you again? A. Well, about an hour later in the shop he came in and he brought the statement in and he asked me to sign it.
 - Q. Did you read it or did he read it? A. Yes.
 - Q. Who read it? A. I read it.
- Q. What did it say, if you recall? A. Just said that I was delinquent in my chores, from 7 a.m. to 9 a.m., something to that order.
- Q. Did Mr. DeRonde say anything to you as you read it? A. He asked me to sign it.
 - Q. What did you say? A. No.
 - Q. What did he do then? A. He left.
- Q. By the way, had anyone ever informed you up to this time, had anyone ever informed you before June 7th that the company had any rule concerning solicitation? A. No.
- Q. Had anyone ever informed you that there was any rule against talking during company working hours at any time? A. No.
- Q. At any time while you were employed with Mays Department [126] Store did you ever get an employee handbook or rule book from Mays? A. No.
- Q. To your knowledge has the company permitted solicitation of employees by other employees during company time and during the workday? A. Yes.
- Q. Can you explain what solicitation you have seen or have knowledge of? A. Well, I would—every once in a while I would hear through the loudspeaker system there was a ball game and if anyone wanted to go, go see Mr. so-and-so in such a department, or there might be somebody collecting for flowers or somebody or stuff that happens, like that.
- Q. Do you have any knowledge of an organization called the Mays Employees Association? A. Oh, yes, yes, that is the MEA. It is a soliciting group. They hold parties, and—

- Q. Did anyone ever ask you to join? A. Yes.
- Q. Who is that? A. I only know Lucille was her name. She was on the third floor, second floor manager, I think.
- Q. When did she speak to you about MEA? A. Oh—[127] Q. If you recall the approximate date. A. February, early February.
 - Q. Of which year? A. Of '73.
- Q. Where did she speak to you? A. Right on the floor, on the second floor.
- Q. What did she say to you, if you recall? A. She told me, she just told me what the MEA was.

It was an employee group for functions and they send flowers to the sick and stuff like that, and that I could fill out an application and that it would cost me 50 cents a month.

Q. Did she give you such an application? A. Yes, she did.

Mr. Appell: May we go off the record a moment, your Honor?

Judge Cohn: Off the record.

(Discussion off the record.)

Judge Cohn: On the record.

Mr. Appell: Your Honor, I propose a stipulation that the woman named Lucille to whom the witness has referred is Lucille Tedeschi.

Mr. Miller: I agree to the name. I think it is completely irrelevant but I agree to the name.

Judge Cohn: All right, sir, thank you.

- [128] Q. (By Mr. Appell) You mentioned that there was a second conversation with Mr. Katz on June 13th. Do you recall that conversation taking place? A. Yes.
- Q. Do you remember what time it came about, what time of the day? A. About 4:30, 4 o'clock.
 - Q. Were you called in to a meeting or did you request it?

A. No, I was working in the shop making up some rigging cables and Mr. DeRonde walked in and said to me, "They want you in the office again."

He said, "What did you do this time?" And I said nothing, you know.

We went over to the office.

- Q. Whose office did you go to? A. Mr. Kaye's office.
- Q. Did you go inside? A. Yes. We went inside and sat down and Mr. Kaye and Mr. Katz was present.
- Q. Did Mr. DeRonde stay also at the meeting? A. Mr. DeRonde? Yes.
- Q. What did Mr. Katz— A. I don't think Mr.—Mr. Kaye was present. I think it was Mr. Zayle. I'm not sure of those two gentlemen, whether it was Mr. Zayle or Mr. Kaye.
- [129] Q. Mr. Katz was present? A. Mr. Katz was definitely present and Mr. DeRonde.
- Q. What did Mr. Katz say and what did you say during this meeting? A. Mr. Katz said to me, "Mr. Brandt, you have continued to solicit signatures and union activities on company time after you were warned."

I said. "What?"

And then he said to me, "And because of this we will have to let you go as I told you."

Then he asked me to sign a resignation which I said no.

He said to me, "If you sign a resignation life will be easier for everyone. If you need a reference we will give you a reference. If you don't sign the resignation it will be very difficult on such a matter as when the employer sends for reference, we will have to put in the facts, all about this unionizing and what-have-you and whatever else is in your file."

Now I understand that I had a file. I didn't know about that and he said to me, "Whatever is in your records will have to

be put on this, on the form that the other employer would send the reference, reference form".

Q. What did you say? A. And I said, "No, I'm not signing."

[130] Q. What did Mr. Katz say? A. Well, Mr. Katz says, "Okay, you're fired."

He said to me, "Come back Friday and pick up your pay" and I said, "No, sir, you have to pay me now" and he said no and I said you do.

And he made a phone call and that was straightened out, he had to pay me.

Then I said to him, "I want you to give me a discharge form for the Unemployment Office" and he said, "No, I don't."

I said, "Yes, you do", and we sat there for a minute and he called someone and he made the arrangements or he found out that he had to do such and he made the arrangements.

Q. Then what happened? A. And then Mr. DeRonde escorted me out of the office to around the corner to Payroll and which we waited for them to make up my paychecks and then also that form for the Unemployment.

I received that also. I signed the pay voucher stipulating how much money I received in check form.

I was escorted back to the shop, picked up my personal tools, toolbox, ropes, some such and was escorted out to my car by Mr. DeRonde.

Q. When Mr. DeRonde went out with you did he say anything [131] to you? A. Well, he expressed the fact that I was a good worker and that I could work alone and that it is unfortunate I had to be involved in this stuff or if I needed a good recommendation, if I needed a recommendation for a job to send it to his office, to him personally and he would give me such a recommendation.

He said I was a good worker.

- Q. Did the company ever offer you your job back after that? A. No.
- Q. Did you ever hear from the company again on this matter? A. No.
- Q. By the way, are you familiar with an operation known as a "Billy Goat" operation at Mays? A. Yes. It is a little gasoline powered vacuum cleaner that sucks up garbage, paper and stuff in the parking lot.
- Q. Who regularly operates that? A. His last name is Mason, I believe.
- Q. Have you seen him working on that? A. He was the only one that does it.
- Q. In all the time you were employed as long as Mason was at the job did you ever see anyone else—when I say on the job I mean there that day, did you ever see anyone other than Mason operate the "Billy Goat"? [132] A. Not if he was there, no.
- Q. After you were fired did you attend any union meetings? A. Yes, there was a meeting June 14th at five o'clock to be held at Madden's Pub in Massapequa Park.
- Q. Do you remember if Laura Gribbins was present at that meeting? A. Yes, she was. I picked her up at the store.
- Q. How about Mr. Murphy, Bernard Murphy, was he present? A. Yes, he was.
- Q. Who informed them of that meeting, do you know? A. I did.
 - Q. Do you remember when it was? A. When was what?
- Q. When it was that you informed them of the meeting. A. I believe to the best of my knowledge I believe it was that prior Monday.
 - Q. Before you were fired? A. Before I was fired.
- Q. Where did you tell Murphy about it? A. To be honest with you, I don't recall.

- Q. How about Gribbins, do you remember where you told her? A. Her I told, Laura, during the lunch break, I believe.
- Q. Between the time you were warned on June 7th and your discharge on June 13 did you give out any cards in [133] the store during working hours, do you know? A. No, I did not.

Mr. Appell: I have no further questions at this time, your Honor.

CROSS EXAMINATION:

- Q. (By Mr. Miller) As I understand you it is your testimony as you say that you never asked for cards while you were on working time, you never solicited while you were on working time? A. As of the date of warning, June 7.
- Q. Before that you were soliciting on your working time? A. Well no, it would be lunch, coffee break, after hours.
- Q. I am talking during hours, you never did that before June 7th? A. Well, I don't know what you mean.
- Q. Did you ask someone to sign a card, did you give someone a card, did you talk about the union while you were working? A. Yes, I did.
 - Q. Before June 7? A. Yes, I did.
- Q. Did you disclose that fact to Mr. Katz when he spoke to you on June 7? A. No, I didn't.
 - C. You lied to him? [134] A. No, I didn't.
 - Q. Did you tell him the truth? A. No, I didn't.
- Q. When Mr. Katz spoke to you on June 7th did he mention the words "selling floor"? A. He may or may not, I don't recall.
 - Q. You don't remember whether he mentioned it?

Do you remember whether Mr. Katz spoke to you about off time and company time in the course of that conversation? A. I believe he made the statement on company time. I don't recall how it fit. I believe he did say that somewhere in there.

Q. Would it refresh your recollection if I suggested to you that he said you cannot solicit on company time but you can solicit on your own time; does that refresh your recollection? A. It sounds possible.

Q. Let me go further, Mr. Brandt. Didn't Mr. Katz go so far as to tell you specifically where you could solicit? A. Not to my recollection.

Q. He didn't tell you you may do so in the lunchroom? A. Not to my knowledge.

Q. He didn't? And he didn't tell you where else in the environs surround the store where you may solicit? [135] A. I don't recall Mr. Katz saying anything as to where I may solicit.

Q. You don't recall that at all? A. I may-

Q. Who was present at that June 7th meeting again? A. Mr. Katz and Mr. DeRonde, I believe, the two people present.

Q. Those two people were present? A. Yes.

Q. They were present all the time this conversation went on? A. That's right.

Q. Was Mr. Kaye present at the June 7th meeting? A. I believe it was Mr. Kaye, yes. There was another party present.

Q. So there were three people there at that time besides yourself, right? A. Right.

Q. I will ask you if any specific comment stressing the difference between selling floor and that area which is not the selling floor was made. A. It may be possible, I don't recall.

Q. You don't recall it? A. I don't recall it.

Q. It could have been said? [136] A. It might be, I don't recall it.

Q. But you say it could have happened? A. Yes.

Q. Is your lack of recollection the reason you did not mention these facts when the general counsel asked you the question before about who said what to whom? A. Probably.

- Q. Lack of memory? A. Probably.
- Q. Do you know a Mrs. Strayhorn? A. I know of her.
- Q. You do know of her? You know her? A. I think I met her once, saw her once, spoke to her once.
- Q. What was the occasion of your speaking to her and what happened when you talked to her? A. I believe we were on the stairs coming down or going up, one way or the other.
 - Q. Between selling floors? A. If you want to call it that.
- Q. What did you say to her and what did she say to you? A. Or was it in the elevator? Mrs. Strayhorn is a short woman? I don't recall the person and the name but I have the feeling that she is a short black worman.
 - Q. That is right.
- [137] Did you attempt to solicit her? A. No.
- Q. You are sure now? A. What do you mean solicit? You mean ask her to sign a card?
- Q. Ask her to sign a card and talk about the union. A. Oh yes. I didn't ask, no, I did not ask her to sign a card.
- Q. You did not ask her? A. I did not ask her. I did speak to her about the union but I did not ask her to sign anything.

I think my statement went "Did you hear about the union? Are you going to join?"

She said yes and now that was it, and I believe I was going upstairs now that I recall. I was going up from the basement to the main floor on the stairwell.

- Q. Was that during the lunch hour? A. I think I was going to coffee. I think it was early in the morning. I think I was going, coming, going to my coffee break.
- Q. In other words, this was a regular coffee break you were allowed? A. Yes, I guess, yes.
- Q. When is your coffee break? A. Well, there was a little controversy on this. Some [138] mornings it was 8:30, some mornings it was 9 o'clock. I think it wound up to be 9 o'clock. I don't recall. It's been a long time.

Q. But you know you were on coffee break, going to take coffee in the lunchroom I presume when you spoke to the short black lady as you say? A. I believe it was working down in the bailing room and I came out of the elevator and I was going up the stairs and she was coming around the corner.

I was going to coffee I think and I just, you know, off the top of my head I said, "Did you hear about the union?"

And she said yes.

I said, "Are you joining?"

She said, "No," very, very scared.

Q. She was very scared?

Mr. Miller: I move to strike that comment.

O. How was she scared?

Mr. Miller: I withdraw my motion.

- Q. Tell me how she was scared. A. Well, she was deathly afraid of saying anything about unions. Her past history, the first word of union you got fired.
 - Q. Who said that? A. Everybody.
- [139] Q. Did she say that? A. Yes, I think she did relate that.
- Q. Do you know whether she said that? A. No, I didn't talk to her that long.
- Q. So you spoke to another woman? A. I spoke to five of them.
 - Q. Was it all on the coffee break? A. No.
 - Q. It was on your own work time? A. No.
- Q. When was it? [140] A. In transportation somewhere from one floor to another, up the elevator or during the lunch breat. I didn't speak to them all at once. One at a time. One one day and one the next day, you know.

- Q. How is it that they are always on the elevator? A. Because that is what the store has, elevators, escalators.
- Q. So you only spoke to them on the elevators? A. Yes, or escalators or walking upstairs or walking from here to there and never, I never stopped my job to talk to anyone.
 - Q. Never? A. Never.
 - Q. Well now, you did lamp work? A. Yes.
- Q. What is lamp work, what does it involve? A. Changing light bulbs.
 - Q. Do you have to get up on a ladder to do this? A. Yes.
- Q. When you were doing lamping work while you were taking [141] out bulbs were you soliciting? A. Not to my knowledge.
- O. What other kind of work do you do? A. Whatever maintenance requirements the building needs. Fix the water cooler or the baling machine or the escalator—well, the escalator we didn't do. Whatever—something was broken or had to be repaired we did it. That is our job or was.
 - Q. You solicited while doing all these jobs? A. No.
- Q. You interrupted your work? A. No. Only while going from one place to another.

For instance, working in the baling room, fix the motor, finish the job, pick up the toolbox, walk upstairs or take the elevator upstairs.

If I got into the elevator going up to the second floor there was somebody in there I wanted to talk to I talked to him.

When I got off the elevator into the shop I was done talking to her, I didn't talk to anybody.

- Q. How long does it take to get from one floor to another, do you know? A. A minute, a minute and a half.
- Q. It takes a minute? A. Maybe 30 seconds. I don't know how long it takes. [142] If she stops at the main floor maybe a minute and a half.

- Q. How many floors are there? A. Well, there's the basement, the main and the second.
- Q. So to go two floors it takes a minute? A. I never timed it.
- Q. Supposing I'suggested that the elevator time between the two floors is five seconds. Is that all you did use, five seconds to speak to the person in the elevator? A. If that is what it took that is what I used.
- Q. At these meetings with DeRonde was Frank Collito there? A. Sometimes yes, sometimes no.
- Q. Was he there in any of the meetings at which Mr. DeRonde stated that he will get the union in if you give him money? A. He was once there, yes.
 - O. Mr. Collito? A. Yes.

Mr. Miller: May we stipulate Mr. Collito was the witness who testified yesterday?

Mr. Appell: The record speaks for itself.

Mr. Miller: You will not stipulate that he was the same Mr. Collito?

Mr. Appell: I am willing to stipulate that, your Honor.

[143] Judge Cohn: Pardon?

Mr. Appell: 1 am willing to stipulate that, your Honor.

Judge Cohn: That is all he is asking. Is there more than one Mr. Collito?

Mr. Appell: Not to my knowledge, your Honor.

- [145] Q. Getting back to this June 7th thing, did Mr. Katz give you a warning against soliciting on company time? A. Yes, he did.
- Q. Did he tell you what would happen if you solicited on company time? A. Yes, he did.

- Q. You already said you don't remember anything about the selling floor being mentioned, and I believe you testified before you changed your ways after that warning. A. Yes, changed how?
- Q. You were very careful to solicit not on company time?A. That's right.
- Q. Before June 7th you were not that careful, but after June 7th you were? A. Right.
- [149] Q. Do you know what has happened to the 24 or 25? A. I know several of them were fired.
- Q. I see. How do you know that? A. Because I have spoke to them all.
 - Q. You spoke to them all? A. Yes, sir.
- Q. Can you recall the name or do you know whether Cannon was fired? A. Yes.
- Q. And you spoke to Cannon and Cannon told you he was fired? A. Yes.
- Q. You are quite sure about that? A. Cannon told me he was fired.

Mr. Miller: I hope this is not repetitive, your Honor, but I want to get this clear.

Q. When DeRonde said he was afraid of losing his job who was present there besides you? A. Again Collito, Roudebush and Izzo, I believe.

Judge Cohn: Were they maintenance employees? The Witness: Yes, six

Q. I believe you testified before that you gave testimony at the first hearing.

Mr. Miller: I believe we can stipulate for the record that the first R case was 29-RC-2202.

[150] Judge Cohn: Yes.

Mr. Miller: And that there were two hearings, April 17th and May 2nd.

Mr. Appell: I believe.

Judge Cohn: The complaint alleges May 2nd.

Mr. Miller: There was another one in April. There were two hearings. I have the testimony here.

Judge Cohn: All right, sir.

- Q. (By Mr. Miller) Did you testify at that hearing? A. Which one?
- Q. That first one back in April or May. A. No. Oh, May, not April.
 - Q. May 2nd, right. A. Yes, May 2nd.
 - Q. Who else testified? A. On which?
- Q. Let us say for example who testified from the unit that was there, that was being contested? A. Cannon.
- Q. Would the name Gambino mean anything to you? A. Yes, Sal Gambino, yes.
 - Q. Did Sal Gambino tell you he was fired? A. No.
 - Q. Only Cannon told you he was fired? [151] A. No.
- Q. I mean of the people who testified, I'm sorry. A. Of the people—
- Q. Of the three who testified, Gambino and Cannon and you were discharged. Now, I believe you said that Cannon told you he was fired. A. Right.
- Q. And Gambino did not tell you he was fired? A. I haven't spoken to Gambino yet.
- Q. You don't know what is happening to him? You don't know what happened to him, do you? A. I haven't spoke to him yet.
- Q. You don't know then whether or not he is still working for Mays, do you? A. I assume he is still there.
 - Q. Oh, you assume it? A. Like I said I haven't spoken to

the man in quite a while. The last time I spoke to him he was at the store.

[152] Q. You testified before about a rebuke that was given you, a reprimand given you by DeRonde after you spoke to Mrs. Gribbens one morning.

Who was present at the time of the rebuke? A. Again Frank Collito and Tom Izzo.

- Q. I wonder, did you testify that DeRonde appeared angry at the time? A. At what time?
- Q. At the time that he gave you the rebuke? Did he look as if he was angry? A. I don't—
 - Q. Was he yelling at you? A. What day, when?
- Q. The day that he gave you the rebuke after speaking with Mrs. Gribbins, after you spoke to Mrs. Gribbins? A. Yes, he was mad.
- Q. He was very angry? A. It appeared that way, yes. Furious.
- Q. When Mr. DeRonde stated that he could get the union in if he was paid money, did you relay that statement to anybody in the union? A. No.
- Q. You did not think that was an important statement to relay?

Mr. Appell: Objection.

[153] A. It was important.

Judge Cohn: Overruled. Go ahead.

- A. (Continuing) It was important only to me at the time.
- Q. It was important only to you at the time? A. That's right.
 - Q. You didn't think it was important to the union? A. No.
- Q. You testified to a conversation with Mr. DeRonde on or about the date following the May 29th decision.

I believe you testified to a statement that Mr. DeRonde said that the union—when the union loses you are all going to get fired? A. Yes.

- Q. This was the day after the decision, the May 29th decision, on or about? A. I'm not going to swear to it it was exactly that day or around it. The statement was made. It was around there, on or about, give or take.
- Q. Who was present when that statement was made? A. Collito, Izzo, Roudebush, and I think Gambino was there too.
 - Q. Collito, Izzo and Roudebush and Gambino?

When that decision came down did you understand that that decision in effect meant the union had already lost? A. I will be honest with you, I didn't understand—

[154] Mr. Appell: Objection.

Judge Cohn: What difference does that make if he understands?

Mr. Miller: I have some more questions to ask.

I will point out that the four people who were told that they were going to get fired win or lose are still there.

Judge Cohn: I don't know how-

Mr. Miller: I may try to prove that he knows.

Judge Cohn: I think you have a right to go into the nonsense that I think the testimony is, in my judgment.

Well, all right, overruled.

The Witness: What was the question?

Mr. Miller: Read it back.

(Whereupon the last question was read by the Reporter.)

A. Well, I understood it to mean that the decision was that the union had won with the exception that they had to

have the signatures of whatever other number of people like porters and housekeeping.

- Q. When DeRonde said that you were all going to lose because Mr. Katz had a hate on for all of you, did you understand that to mean he had a hate on for all of you because of your union activity? A. Let me—the way I understood it was the primary interest of that man was to crush any chances of the union [155] and that was just another little scare to throw into me, that is all.
- Q. What was this hate? The hate— A. Well, the hate is a word.
- Q. Who used that word, you or was it Mr. DeRonde? A. I'm not sure. I might have misconstrued it. He might have said it, it doesn't—
- Q. I gathered your testimony before was you said Mr. DeRonde said Mr. Katz had a hate on for all of you? A. That's right.
- Q. Now, are you withdrawing part of that testimony? A. No.
- Q. Then you say that Mr. DeRonde did say Mr. Katz had a hate on for all of you? A. All right, fine, leave it that way.

Judge Cohn: Well, let's don't leave it that way. We want to know whether or Mr. DeRonde used the word "hate".

Do you remember that?

The Witness: I'm not quoting. I don't—I'm not quoting. I don't recall whether he said hate or—I don't remember whether I heard it, whether he said it or I heard it if you understand what I mean.

He may not have—I think he said it but I'm not going to swear to it. I believe he said it but I'm not swearing to it. It's possible. It's been seven months, [156] eight months.

Judge Cohn: All he is asking you, Mr. Brandt, is whether or not in your recollection Mr. DeRonde used the word hate in that context. Do you remember that?

The Witness: My recollection of the statement went like that, that Mr. Katz had a great hate for all of us, in my recollection.

Q. Well, that is your recollection. So you are swearing to this recollection? A. Okay, fine.

Q. Now, are we clear that this is your memory and you swear to it; are we clear on this? A. Okay.

Q. Did you report this conversation to the union?

Mr. Appell: Objection.

Judge Cohn: Overruled.

A. When you say report you mean like going to somebody and say well, he said this? No.

I believe I mentioned it in one of the parking meetings, that this was—Mr. Katz was out to get us.

Q. What parking lot meeting? A. When the union, when we people had meetings in the parking lot which I testified we had six or seven.

Q. Who was present at that meeting in the parking lot when you reported or when you mentioned this threat of Mr. [157] Katz, Mr. Katz is going to get rid of you all? A. Collito, Izzo, Roudebush, I think Fazio was there. I don't recall all of the people who were there.

Q. Was Mr. Lunger there, the union representative? A. He might have been, yes, yes, he was. He was always at the—he oversaw the meeting.

Q. You testified that you were speaking to Miss Gribbins on a day when you say Mr. Kaye and Mr. Zayle pass by; isn't that true?

On the morning you spoke, the 7:30 a.m. conversation you had with Miss Gribbins, you remember testifying to such a conversation? A. Yes, yes.

- Q. What day was that? A. June the 11th, I believe.
- Q. You remember that day? A. Yes, vaguely, yes.
- Q. Where was this conversation? A. In the basement or—yes, the basement floor by the hardware department.
- Q. Where do employees come in to Mays? A. Through the back into the basement.
- Q. Don't they have to pass the hardware department to get in? A. Yes.
- [158] Q. And that applies for everybody who uses that entrance, has to get in there and pass the hardware department to go upstairs, don't they? A. I assume.
- Q. You assume? A. I assume that is the only entrance in at that hour.
- Q. What time were you supposed to go to work? A. 7 o'clock.
 - Q. And you had this conversation at 7:30? A. Okay, yes.
- Q. What were you doing? What job were you performing when you were talking with Miss Gribbins? A. I believe we were taking some lamps to the reception area or the checking area where the time clocks are.
- Q. You mean you were carrying lamps in your hand? A. Yes, bulbs, light bulbs.
- Q. So you were then walking and talking to Miss Gribbins? A. Right.
 - Q. At the same time? A. Right.
- Q. So that your work continued as you were talking to Miss Gribbins? A. Right.
- Q. You wouldn't think of stopping your work? A. No.
- [159] Q. Let us get back to the meeting at which-

Judge Cohn: Off the record.

(Discussion off the record.)

Judge Cohn: On the record.

We will have a ten minute recess. I will instruct the witness that you can get up to move around but I don't want anyone talking with you.

(Short recess taken.)

Judge Cohn: On the record.

Do you have any other questions, Mr. Miller?

Mr. Miller: Yes, Your Honor, I do.

May I have my memory refreshed as to the last question prior to the recess?

(Whereupon the appropriate question on the record was read by the Reporter.)

- Q. Now, was there anybody else present when you were talking to Miss Gribbins? A. Yes.
 - O. Who was present? A. Frank Collito.
- Q. Was DeRonde anywhere around there? A. Not to my knowledge.
- Q. Mr. Brandt, aren't you normally assigned to the second floor, not the basement floor? A. Except Monday. [160] Q. You mean you remember this was a Monday? A.

Did I state that?
Yes, I do, I remember. Two days before I was fired.

O. So that is the way you remember? I see

On Monday you are assigned to the basement? A. No.

- Q. Where are you assigned Monday? A. All over.
- O. All over? A. Yes.
- Q. Do you determine yourself where you are going to go or does someone tell you where to go? A. Well, we determine more or less ourselves. We do what is necessary because of the absence of other men.
- Q. On or about the time you got a bawling out or the equivalent I believe you testified, from DeRonde, did you go

into his room or meet him on the floor and apologize to him? A. I might have done that to some effect apologize, yes.

Q. What were you apologizing about, Mr. Brandt? A. Well, probably the fact that he did have to get upset, you know, but I don't like to be hollered at and when I am hollered at I like to know why.

When I find out why I apologize for whatever he thought was wrong.

[161] Q. Do you remember what he thought was wrong? A. I only remember him saying that he was very annoyed that somebody had reported to him that I wasn't doing my work and that I was not doing my work, that I was delinquent in my chores or however.

Q. Did he tell you that he was mad because someone reported it to him or because he noticed it himself? A. Because somebody reported it to him.

Q. He didn't mention the fact that he noted it himself? A. He may have said that too.

Q. It was for this that you apologized? For not doing your chores? A. No, apologized because the man was upset with me and that is just a thing I do.

Q. You mean if you were not to blame you would still apologize? A. Well, more or less just to keep things cool, just to keep everything nice. I don't like to work with hostilities as much as I have to, as little as I have to, rather.

Q. You testified to talking to Harry Schob? A. Yes.

Q. Was there anybody else you talked to at about that time? A. Which time?

Q. Well now, when did you talk to Harry Schob? [162] A. Most every morning and afternoon.

Q. What time did you talk to him about the union? A. I believe we discussed it on several occasions. Do you have something in mind specific? I don't understand.

M. Brandt, for General Counsel, Re-direct.

I talked with all the porters about the union at one time or another.

- Q. Let us take June 7th, on or about June 7th you spoke to Harry Schob on that day, didn't you? A. Again.
- Q. I believe you testified to that on direct. You mean you don't remember that? A. On or about.
- Q. On or about June 7th, right? You spoke to Harry Schob about the union, right? A. All right.
- Q. Was there anybody else present when you spoke to Harry Schob about the union? A. Not to my knowledge.
 - Q. Do you know a young fellow called Storm? A. No.
 - Q. You don't know him? A. The name is not familiar.
- Q. But did you speak to Harry Schob when someone else was present while you were talking to Schob? A. Not at the incident I testified about. That was—
- [163] Q. On June 7th, on or about June 7th let us say when Mr. Katz was talking to you in Mr. Kaye's office do you know what Mr. Katz had in front of him? A. No.
- Q. Did you see a yellow pad in front of him? A. He might have had, I don't know.
 - Q. You didn't notice that? A. No.
- Q. You didn't notice him with a pencil or a pen pointing to things on the yellow pad? Not to you but for himself? A. He may have. I didn't observe the man's actions.
- Q. You have no memory one way or the other about it? A. I never looked. I don't remember looking at him, have a particular reason.

Judge Cohn: Do you have any further questions?

Mr. Miller: No, I have none.

Judge Cohn: Any redirect?

RE-DIRECT EXAMINATION:

Q. (By Mr. Appell) Mr. Brandt, you testified with reference to Mr. Katz using the word "hate".

M. Brandt, for General Counsel, Re-direct.

You weren't sure you recollected this word, you weren't sure of it. Are you sure some statement along those lines was made, whether the word hate was used or another word? A. Yes, by Mr. DeRonde.

Mr. Miller: Objection.

[164] Judge Cohn: Overruled.

- A. (Continuing) He made the statement about Mr. Katz wanting to get rid of us because of our involvement with the union.
- Q. When you say us, didn't he indicate who us was? A. Well, as it was put the original seven.
- Q. You say it was put. Did he say the original seven? A. I believe he did, yes.
- Q. How many people were working in the maintenance department at that time? A. Seven.
- Q. Did Mr. DeRonde explain what he meant by making statements? A. Yes. Well, he could have reworded—I believe he put it this way, he could have reworded his testimony so that it would be in favor of us, the employees, instead of the employers.
- Q. Did he testify at the first NLRB hearing? A. Yes, he did.
- Q. There has been some testimony regarding your giving [165] out cards or talking about the union before June 7th, before the warning was given to you. A. Right.
- Q. Did you actually give out cards during working time on company premises before June 7th as opposed to coffee breaks or after work?

Did you actually give out cards on company time and premises before June 7th? A. Coffee breaks, lunchtime, going some place. If I had—I didn't generally have them on me

M. Brandt, for General Counsel, Re-direct.

unless I went back to the shop to get them which would be like coffee or lunch breaks or after work.

- Q. Did you give out any during the work time in passing from one place to another before June 7th? A. Yes, I may have, may have passed one off or two.
- Q. Did you do that after June 7th on company time and premises, give out cards to employees during working time after June 7th, after the warning? A. No, not during the actual working period, no.
 - Q. Did you finish your answer? A. Yes, I'm finished.
- Q. When Mr. DeRonde said whether the union won or lost people would be out of jobs did he explain that further? A. Well, explained it in such a manner that if the union lost they would try and get rid of us for instigating all [166] this trouble.

If the union won it would be they would get rid of us by requiring that the union give the store better qualified help.

- Q. Who was it who said that? A. Mr. DeRonde.
- Q. Did he actually say that or was this just the impression you got? When I say, say, I mean words to that effect. A. In words to that effect he said that.

P. Dashefsky, for General Counsel, Direct.

[167] PAUL DASHEFSKY was duly sworn and testified as follows:

Judge Cohn: Give your name and address to the reporter.

The Witness: Paul Dashefsky, 936 John J, Columbia University, 10027.

Judge Cohn: Please speak up, sir, so we can all hear you.

The Witness: Sure.

Judge Cohn: Go ahead.

DIRECT EXAMINATION:

Q. (By Mr. Appell)

[186] Q. Mr. Dashefsky, when you came to the store did anyone give you an employee handbook or rule book? A. No.

- Q. Did anyone ever tell you that there was a rule against soliciting? A. No.
- Q. Did anyone ever tell you there was a rule against talking during working time? [187] A. No.
- Q. Did anyone ever tell you to stop talking during working time? A. No.

CROSS EXAMINATION:

- Q. (By Mr. Miller) Do you mean you stopped work to talk, you stopped doing your work and you talked? A. I believe I can talk while I work. It is possible.
- Q. I'm not asking you that, Mr. Dashefsky. I'm asking you if you stopped doing your work and talked? A. No.
 - Q. Do you understand that you were supposed to do your

work and you were not supposed to stop to have any personal conversations? A. I believe that is the case.

[190] Judge Cohn: You were talking about the General Counsel not being explicit about what his case is and you haven't stated on the record yet what the company's position is with respect to this employee, and I am wondering how much of this is relevant.

Mr. Miller: Well, now how can I state my position? Judge Cohn: You can state it any time. You can [191] state it at the beginning of the hearing, you can state it now, any time, or you can state it in your pleadings.

Mr. Milier: I believe I did state it in my pleadings. Judge Cohn: I'm sorry, you didn't state the reasons for the alleged discrimination of this employee.

Mr. Miller: I'm not supposed to set that up as an affirmative defense, Judge Cohn.

Judge Cohn: I just said you didn't. I'm not saying whether or not it is obligatory.

Although the rules make some reference to that, but aside from that, I just want your statement now as to what the company's position is with respect to this employee.

Mr. Miller: In front of the witness?

Judge Cohn: Do you want him to step out?

Mr. Miller: I would like all the witnesses to step out and I will give you the whole case and every single bit of it and do it on the record.

Judge Cohn: All right, fine.

Mr. Appell: Your Honor, if I may be heard, I would note, as I understand, ordinarily an alleged

discriminatee has the right to be present during the hearing.

Judge Cohn: I understand that, and if you want them to leave--

Mr. Appell: I want to make that statement for the record.

[192] Judge Cohn: Well, this is just a statement of counsel and I agree ordinarily as far as the hearing is concerned that would be so.

Mr. Miller wants to make a statement so that these people wouldn't be advised and I would rather have it that way than not at all.

I will take that into consideration. All right. Will all the witnesses please step out.

(Witnesses leave the room.)

Judge Cohn: I just want your statement as to the reasons as to the company's position.

Mr. Miller: He was discharged for inefficiency without knowledge, any knowledge of his union affiliation.

Judge Cohn: It is not an economic defense?

Mr. Miller: Absolutely not, nothing in the papers, absolutely not.

Judge Cohn: All right.

Mr. Miller: The next one we have here is Fazio. [193] Fazio was let go on a typical reduction force, characteristic of Mays wherein they watch payrolls as opposed to income, and we will introduce evidence and I have to tell you this because otherwise it wouldn't fit, that Mays has about a 150 percent turnover of some 5600 employees every year.

In other words, we give out something between 12 and 15,000 W-2 forms.

Judge Cohn: Well, Fazio then you say-

Mr. Miller: Fazio was just an ordinary reduction in force.

Judge Cohn: Reduction in force?

Mr. Miller: That is right.

Again, without the slightest evident knowledge, I make that point for a reason that you will see in a moment—

Judge Cohn: Without-

Mr. Milier: Knowledge of any union affiliation on his part whatever.

Judge Cohn: I am taking it that the way they are listed here in paragraph 18 though his was because of inability to do the job.

Mr. Miller: Correct.

Judge Cohn: What about Brandt?

Mr. Miller: Brandt was discharged after openly ignoring a very careful warning by Katz.

Brandt has been the one who testified before.

[194] Judge Cohn: I understand that.

He was discharged after a warning?

Mr. Miller: After a warning.

Judge Cohn: All right.

Mr. Murphy?

Mr. Miller: Murphy openly refused to obey a direct order with respect to cleaning. That is what this mason business and this "Billy goat thing is about."

Judge Cohn: Refused to obey a direct order?

Mr. Miller: To use the "bill goat machine to help clean."

' Murphy by the way, was a maintenance helper, a porter, a maintenance housekeeper, I mean. That

means he was a porter and he refused to use the "Billy goat" machine.

Judge Cohn: And Lawrence?

Mr. Miller: He was warned and given a chance. He said "I'm sorry, I would rather quit and I would rather be fired" so "okay, you are fired."

That is exactly what happened and he was a porter, by the way.

With respect to-

Judge Cohn: Previously I gather his work was all right? He just refused to—

Mr. Miller: He just refused, that is right, out and out refused, and I think we have a reason for it too. It [195] will come out in the argument, so we will know why he refused.

The final one is Gribbins. Gribbins unhappily was let go because she could not give explanations as to why certain materials—she was a boutique trimmer by the way and she had certain blouses and a pants suit that was inexplicable in certain areas they shouldn't have been and she took them out.

She also violated company rules in not signing for it. I don't want to call her a thief. I'm simply saying we are not satisfied with the explanation as to what happened with that merchandise, and I think I should tell you that we proposed to put in as part of our proof the enormity of the pilferage problem in all departments, all stores, in Mays particular.

I tell you it is a public company, and its records are on the New York Stock Exchange and we would be very happy to exchange our profit picture for our pilferage loss every year.

Judge Cohn: Any way it is for alleged pilferage?

Mr. Miller: Well, we are very cautious about that. She violated the company rules and she never gave a satisfactory explanation as to why certain merchandise was there and she was given a chance to explain and as a matter of fact our investigation went over two days.

Judge Cohn: The other, I think you mentioned—[196] Mr. Miller: I beg your pardon?

Judge Cohn: The alleged discrimination with respect to her transfer from and I gather from your response that she was—

Mr. Miller: She got raises for it. She already testified to it. I have the testimony here. She has been transferred now since 1972.

It came out in that R case hearing.

[218] (Afternoon Session—2:30 o'clock P.M.)

Judge Cohn: On the record.

Mr. Miller: Before we proceed, your Honor, I wonder if you would give me a couple of minutes to discuss here on the record that which we discussed without the presence of the people here and it no longer is necessary.

I have the following problem based again with regard to this Bill of Particulars.

All I can do is point out to you and ask you to assist with the solution.

They have, for example,-

Judge Cohn: Could I have that in front of me?

Mr. Miller: For example, the situation arises now that the testimony indicated that Hord saw certain things happen on June 8th.

Now, if you look at your surveillance sections of the complaint and of the Bill of Particulars, Hord is involved in no surveillance situations at all.

At first it is because of the quantity of this consolidated proceeding that I sometimes can miss certain things at the moment, they are omitted but Hord is not involved in any surveillance.

Accordingly, the only thing that I can think of is that Hord saw this perhaps, and I emphasize the word perhaps, [219] counsel to the General Counsel wishes to do some tieing in with company knowledge of union activities by virtue of Hord's watching. But there is no such evidence in which case I would move to strike that testimony.

It is irrelevant until they show some connection.

Now, if they are going to show a connection I never really know when they are going to tie up what you see.

On the other hand, if it is straight surveillance they are proving which is what I thought in the first instance there is no surveillance particularly for Hord at all.

Judge Cohn: I think it is clear, to me anyway at this point, and if I am incorrect General Counsel I am sure will correct me, the Bill of Particulars related to the allegation of 8A1 and general counsel, of course, is not required to plead evidence and I assume therefore, since if your statement is correct, and I haven't checked the complaint or the Bill of Particulars, but I assume your statement is correct, that Mr. Hord is not connected with the alleged surveillance, then the only possible relevance to his testimony would be, as you suggest, having to do with the company knowledge of one of these alleged 8A3's, union activities, and that is so then it is certainly competent and relevant evidence and need not be alleged, and if it is not alleged, I certainly would not find that it is in violation of Section 8A1.

[220] Is that right?

Mr. Appell: That is correct, your Honor.

You may find not only that the surveillance goes to the question of knowledge and motivation for the 8A3 violation, but you may find perhaps that there was a violation of 8A1 even though you were not prepared to find formally that there was an 8A1 violation and you might find an 8A1 violation permitted outside of Section 10B in which you may make a certain specific finding and propose a remedy thereon but you would use that in terms of determining the overall picture.

Judge Cohn: Well, there is Board and Court authority as you aware that even though a certain incident may not be alleged, may not have been alleged, but that the incident was litigated, it came into evidence and there was no objection, and so forth and that under such circumstances a finding, even after I close the hearing, could be found based upon those circumstances.

I hesitate to do that and I don't think I would do it unless I advise counsel.

But I appreciate your bringing that to my attention at this point because I think what I stated is the way that I would approach it, and that is to say that I would not make an independent finding of 8A1 based on that incident, but I think it is proper and competent evidence to take into [221] consideration on the 8A3 allegations.

Mr. Miller: I understand your Honor's point, but I had sought to emphasize at this point that the difficulty in a consolidated proceeding, particularly where so much is put together and when the Bill of Particulars is supposed to enhance a complaint, the difficulty in following the particular relevance of the evidence adduced just as you found it difficult to follow the

relevance of some of the questions I put until I explained what I was trying to get at in my questioning, and this is the problem I was addressing myself to with respect to each particular finding.

I would also say that unless, for example, I thought that there was some evidence to tie in company knowledge with something it may be competent.

If this is all there were to it I might have made an objection, but you see, I am still waiting because I don't know under which particular allegation of the complaint every piece of evidence is being put in.

Is it being put in in connection with the 83, is it being put in in connection with the 81?

How do I know what they are trying to prove?

Judge Cohn: Well, I think that you have been served with a complaint. You have been served with a reply in response to your motion and as I said yesterday, if there is something that comes out in the evidence that is not in the [222] general area certainly of the response of General Counsel as far as the 8A1 is concerned, I am not going to make a finding as to 8A1 although I might consider it competent evidence based on the 8A3 and I think that is the way that you should consider it.

Mr. Miller: In that case I can do no more than reserve my right to object to the testimony with Dashefsky.

For example, I emphasize that point because there must be other incidents like that, as I review the testimony that in the absence of showing any basis for company knowledge of union activities, the mere fact that he waved to somebody and someone saw him, and I am not even talking about the contested evidence we have yet to put in and let us take it the way it came out.

That is not evidence of company knowledge of union activities.

Judge Cohn: Oh, I think it is *prima facie* evidence. Mr. Miller: That he waved to Brandt and that is

company evidence?

Judge Cohn: All I am saying is as you well know the Board and the Courts have held many times you don't have to have direct evidence of company knowledge, this can be—

Mr. Miller: Agreed.

Judge Cohn: Gleened by circumstantial evidence, and all I am saying is I consider that *prima facie* a substantial [223] evidence of company knowledge.

Now, I am not certainly here at this point in the proceeding stating how much weight I might give it because it depends a lot on all the other evidence in the record, but all I am saying is that I think at this is some evidence going towards that point.

Mr. Miller: Of course then all I can do then is to make my position clear, that as a matter of law I would vouch chase to you the opinion as a matter of law that it is insufficient.

I take it you don't agree, but I do want to have that position on the record.

As a matter of law, I deem that to be insufficient connection and no basis for an inference whatever on the evidence adduced with respect to Dashefsky.

Judge Cohn: All right.

Mr. Miller: And I certainly object if that is going to be deemed to be any part of the surveillance count, I most certainly object to that.

' Judge Cohn: All right.

Mr. Appell: And I would like to state, your Honor, that the Bill of Particulars sort to set out as best as possible the various details requested by counsel which were deemed allowable but we certainly would not seek in anyway to dissuade you from making any findings as to an 8A1 violation [224] if there is some variance as to time and even as to persons alleged in the complaint and the reply.

If there is some variance, but it is not material and Respondent is on notice and basically the evidence falls within the framework of the complaint we certainly would not seek to dissuade you from making any findings.

Judge Cohn: All I am saying is that the Board has said that there may be some variance between the allegations in the complaint or the bill of particulars and the evidence.

Of course, the extent of the variance would depend from case to case, and I'm not going to say how much variance is allowable.

I do think that certainly the names of the persons involved should be specific and the variance should be limited to the time and place.

All right, call your next witness.

W. Fazio, for General Counsel, Direct.

WILLIAM FAZIO was called as a witness, having been first duly sworn in by Judge Cohn, was examined and testified as follows:

Judge Cohn: Give your name and address to the Reporter.

The Witness: William Fazio, 174 Park Avenue, Amityville.

Judge Cohn: Speak up, please, so we all hear you. [225] The Witness: William Fazio, 174 Park Avenue.

Judge Cohn: I heard you that time. I mean for the rest of your testimony.

DIRECT EXAMINATION:

Q. (By Mr. Appell) * * *

[243] Q. Mr. Fazio while you were employed with Mays were you ever informed of any rule, were you informed by any company official of any rule against soliciting on company time on premises? A. No, no sir.

Q. Did you ever see any soliciting take place among employees during the work day? A. Yes.

[244] Q. When was that? A. It depends. If somebody got married or if somebody's birthday or if somebody's relative passed away, they would get up a collection for him, you know.

I saw a lot of it going on. In fact, I even gave to a few myself.

Q. To your knowledge, did any supervisors see you or anyone else contribute pursuant to such solicitation? A. I really don't think so.

Q. Are you aware of the existence of a Mays Employees Association? A. Yes.

W. Fazio, for General Counsel, Cross. L. Gribbins, for General Counsel, Direct.

Q. Did that do any soliciting, that organization? A. I never belonged to it so I really don't what they were doing.

[248] CROSS EXAMINATION:

Q. (By Mr. Miller) * * *

[254] Q. You thought you were allowed to talk while you were on [255] duty? A. I always talk when I work.

Q. But what I mean were you allowed to p working? A. More or less talk when I work. I don't thirk we are allowed to stop working when we talk.

[259] LAURA GRIBBINS was called as a witness, having been first duly sworn in by Judge Cohn, was examined and testified as follows:

Direct Examination:

- Q. (By Mr. Appell) Your full name and address? A. Laura Gribbins, 1310 Shore Place, Seaford.
 - Q. I will ask you to yell a little bit? [260] A. All right.
 - Q. To reach the normal level.

Miss Gribbins, were you ever employed with Mays, J.W. Mays Incorporated? A. Yes.

- Q. Where did you start, when did you start? A. I started in February of 1969.
 - Q. At what store did you begin? A. Massapequa.
- Q. Until when were you employed with Mays? A. Until August 21, 1973.
- Q. During most of the time what store were you regularly employed at? A. Massapequa.

Q. Up to February of '71 did you work at any other store? A. Yes, I worked at Woodmere and Levittown.

Q. When did that come about? A. Well, I started working there in February of '71. I was working several days each week and two stores.

Q. How many in Levittown and Woodmere and how many in Massapequa at that time? A. Two, twice a week or so in Woodmere and then the one week and then I finished the rest of the week in Massapequa, and the following week I would be two days in Levittown and finish the week in Massapequa.

[261] Q. Did anyone ask you to agree to that arrangement? A. Yes.

Q. Who was that? A. Charles Hord.

Q. Did you agree to it? A. When I was first asked I said no, I did not want to do it.

Q. Did you explain why? A. Yes.

Q. What did you say? A. First of all I had a transportation problem. I couldn't get to these stores because I don't drive, and I felt that these people were very hard to please as far as this type of work and I didn't need the aggravation.

Q. Did you perform this work nonetheless? A. Yes, I did because I was told that certain of my problems would be solved.

Q. Can you explain that? A. Yes, Mr. Hord told me that I would be—that he would give me transportation to and from these stores and that I would be getting an increase in my pay.

Q. Did you get such an increase? A. Not until months later.

Q. Did you get transportation? A. From my understanding of it Mr. Hord was to take me [262] there himself and that was why I had agreed to it, but as it turned out I was left in these stores and I had to feel obligated to people that I didn't know to bring me to the stores and to bring me home.

They were always different people.

- Q. Did there come a time when you were put back solely at Massapequa? A. Yes.
- Q. When was that, as best you recall? A. Approximately in April.
 - Q. Of which year? A. Of '71.
- Q. How did that come about? A. Well, I informed Mr. Hord that I was having these problems and since he wasn't holding up to his end of the bargain I felt it was unfair that I should continue to do this.

Mr. Katz came into the store to ask me what my problem was and I explained it to him and several days later Mr. Hord told me I no longer had to go to these stores.

- Q. From in or about May, '71 through June of '73 did you work at any store other than Massapequa? A. Yes, at one time I did go to the Levittown store as a favor to the manager in the display department in Levittown.
 - Q. What is his name? A. Carl Igloi.
- [263] Q. How many days did that last? A. I was there for two days.
- Q. Was there any understanding at that time as to how long you would be in Levittown at that particular time? A. Yes, Mr. Igloi picked me up and he brought me home and it was done as a favor to him because the people in his staff were unable to do the job according to the specifications that were required.

Judge Cohn: When was that, approximately?

The Witness: That was around in June of—I don't know the exact year, but it was sometime after I had stopped going to the other stores.

Judge Cohn: Was it in June this year or '72? The Witness: No, it was '72, it has to be '72.

Q. What was the nature of your work for Mays Department store? A. Well, I worked in the display department.

I did the art work, fashion coordinating, interior displays, window displays, signs, posters.

- Q. When you started what was your hourly wage? A. When I was first hired?
 - O. Yes. A. I was hired at \$1.65 an hour.
- Q. At the time you were discharged what was your wage rate? [264] A. I was making \$3.50 an hour.
- Q. How many separate wage increases did you get while you were working, do you know? A. I got quite a few. I couldn't give you the exact number.
 - Q. More than three? A. Oh, yes.
 - O. More than five? A. Yes.
- Q. At the time you first did some work at the other stores, did you have any conversation with Gail Schulman? A. I had had conversations with Gail whenever I met her upstairs in the Ladies Boutique.

It depended on what store I was in.

Sometimes she was in the Massapequa store I would talk to her.

- Q. Who was Gail Schulman? A. Gail Schulman was the daughter of the owners of the company.
- Q. Do you recall having a discussion with her about the time you first went to go to the other stores? A. Yes, she asked me if I would do her display cases and I told her no for the reasons I have already given.
- Q. Did she say anything else when she asked you? A. She asked me why not, and I told her I felt I didn't [265] want to be aggravated with them.
- Q. Do you recall anything else they said to you at that time? A. Well, she explained how she wanted her cases done and I told her I understood what she was saying.
 - Q. Do you recall anything else? A. No.
 - Q. Do you recall her telling you why she wanted you to do

them? A. Well, she wanted me to do them because they liked the way I did the work.

- Q. Did she say that? A. Yes, she did.
- Q. Who was your immediate supervisor at Massapequa in 1973? A. Lou Manzi?
 - Q. M-a-n-z-i? A. Yes.
 - Q. Who was the supervisor over him? A. Charles Hord.
 - Q. What is his title? A. Charles is the display director.
- Q. What store or stores is he in charge of, to your knowledge? A. I believe he is in charge of four stores. He is in [266] charge of the Massapequa store, the Levittown, Woodmere and Glen Oaks.
 - Q. Did you do art work? A. Yes.
- Q. Do any painting or drawing as part of that art work? A. Yes.
- Q. Were the displays that you did window or interior? A. Both.
- Q. How many people were in the display department at Massapequa as of this year? A. Counting management—
- Q. Not counting management? A. I'd say six, between six and seven, around that amount.

Mr. Appell: May I ask the Reporter to mark this card as G. C. 9 for identification.

(Whereupon, document referred to was received and marked General Counsel's Exhibit 9 for identification.)

Q. Miss Gribbins, I show you a card that has been marked as General Counsel's Exhibit 9 for identification.

Is that your signature on there? A. Yes, it is.

- Q. Is the rest of the red ink yours? A. Yes.
- Q. The date on the card, is that the date you signed it? [267] A. Yes, it is.

Q. Did you put that date in? A. No, I neglected to put that in when I signed the card.

I didn't notice it at the time.

Q. But this is the date you signed it. A. Yes, it is.

Q. Can you tell me where you got this card from? A. Mike Brandt.

Q. Where did he give it to you? A. He gave it to me in the elevator of the store.

Q. Do you remember what time it was? A. It was in the afternoon. I believe I was going upstairs to my coffee break.

Q. Was this Brandt's coffee break too, do you know?

If you know? A. They varied. Sometimes they were allowed in there. Other times they weren't allowed in there at that time.

Q. What did he tell you when he gave you the card? A. He asked me if I had heard anything about a union being formed and I said yes.

He asked me if I was interested and I told him I would like to hear the benefits that the union had to offer and he ran down the line of the benefits rather quickly.

I thought it was a rather good idea and I signed the card.

[268] I handed it back to him right then.

Mr. Appell: I offer General Counsel's Exhibit 9 in evidence.

Mr. Miller: A short Voir Dire?

Judge Cohn: Yes.

VOIR DIRE EXAMINATION:

Q. (By Mr. Miller) Are you certain that the date that appears on here is the date that Mr. Brandt gave you the card? A. Yes, I am.

Q. It was not given to you after- A. No.

Q. (Continuing) —this date? A. No, he handed me the card and I handed it right back to him.

- Q. He gave you the card in the midst of this conversation you have been testifying about? A. When I asked him questions about the benefits, yes
- Q. How do you recognize the Gate June 7th? A. Because I saw him put the date on, on there when we were in the elevator.
- Q. May I ask why you didn't put the date on? A. Because I had handed him back the card and he had a pen in his hand and just put the date on it.

Mr. Miller: I object to the introduction of this card.

[269] Judge Cohn: On what ground?

Mr. Miller: On the ground that there is no direct evidence that—stike it.

On the ground that I can't believe—well, I will tell you what I will do, I don't want to object to it.

I have something else. I don't want to reveal it, I will withdraw my objection and raise my point later.

I withdraw my objection.

Judge Cohn: All right, hearing no objection, G. C. 9 will be received.

(General Counsel's Exhibit 9 for identification, is received into evidence, of this date.)

- Q. (By Mr. Appell) Miss Gribbins, before you signed that card, had you ever spoken about the union to any employees? A. No, I had not.
- Q. After you signed the card did there come a time when Mr. Hord had a conversation with you? A. Could I—I did not know who belonged in the union, but I did talk to other employees that would not have been effected by the union.

I did talk to them about it.

Q. When was that, when did that begin? A. Well, it was sometime in May when Captain McGuire had informed

Evelyn Upton that a union was being formed and she told me about it, but I didn't know who to approach so I [270] didn't say anything to anyone else.

- Q. Did you give your opinion on the union in May to anyone? A. Yes.
 - Q. To whom? A. Evelyn Upton.
 - Q. Anyone else? A. No.
- Q. After you signed the card did there come a time when Charles Hord had a conversation with you? A. Yes.
- Q. Do you remember the date? A. I believe it was around June 12th, the 11th or 12th.
- Q. What time was that? A. It was around 11:00 o'clock in the morning.
- Q. How did that conversation come about? A. He asked me to step into his office and he closed the door.
 - Q. Was anyone else present? A. No.
- Q. What did Hord say to you and what did you say to him? A. He told me that I had been observed talking with Mike Brandt in the hardware department earlier that morning.

He asked me if I had spoken to Mike Brandt about the union.

[271] At that time I told him no, I did not.

I told him that I was talking about light fixtures for the window and Charles said to me, he asked me if I had heard anything about a union and I said yes, I was aware that a union was being organized in the store.

He told me that I should stay away from such people because other unions had tried to get into the Mays Department Stores previously and that it had never—it had never worked and that people were getting fired because of this and that I should stay away from it.

[272] 'Q. Did you say anything else in this conversation?

A. I asked him if my raise had gone through and he said he would check it out and—

Q. Did he say anything then? A. Yes, he asked me if I would be interested in an assistant manager's job in display and I said yes.

He said it would have to be in the Levittown store and I told him that I could not get to the Levittown store so I was not interested, and that was the end of the conversation.

- Q. Do you recall anything else that Hord said? A. Not at that time.
- Q. Do you recall if he mentioned anything about your pay as an assistant manager? A. Well, when you get a promotion you get an increase also.
 - Q. Had you been speaking with Michael Brandt? A. Yes.
- Q. Do you remember when that was? A. It was earlier that morning.
- Q. Where were you speaking with him? A. By the Hardware Department.
- Q. Do you remember what you were speaking to him about?

What you said to him and what he said to you? [273] A. Yes, I asked him if he had gotten enough people to sign cards, the number that was required, and he said yes, he had and not to worry about it.

He then told me that a Union meeting was in the making and I asked him where it was to take place.

He did not know the name of the place but he said he knew how to get there.

- Q. Do you remember what time that was, about? A. It was around 7:50 in the morning.
- Q. After that did you in fact attend a Union meeting? A. Yes, I did.
- Q. Do you remember when that was? A. The first one I attended was on June 14th.

- Q. Where was that held? A. Madden's Pub.
- Q. How did you get there? A. Mr. Brandt picked me up in his car outside of Mays' parking lot.
- Q. What time was that, do you know? A. That was after I had gotten off from work.

Must have been around a quarter to 5:00, 5:00 o'clock.

- Q. What were your hours of work at the time? A. I arrived at work 7:45 to 4:45.
- Q. After that did there come a time when you were [274] transferred? A. Yes, I was.
 - Q. From Massapequa to what store? A. Levittown.
- Q. When were you first informed that you were going to be transferred? A. On June 19th.
- Q. What time were you so informed? A. 11:00 o'clock in the morning.
 - Q. Who informed you? A. Charles Hord.
 - Q. Where did he inform you? A. Upstairs in the cafeteria.
 - Q. Was anyone else present? A. Yes, Paul Warwell.
- Q. What did Mr. Hord say to you and what did you say to him at that time? A. Charles told me that I was to be transferred to their Levittown store and I asked him why.

He said "You are just being transferred, don't ask any questions about it."

So I told him that I could not get to the store and he said that he was very sorry but that is where I had been transferred to.

So I asked him if he was trying to make me quit my [275] job and he never said the word quit, that I had mentioned it, so I said to him "Why don't you save yourself the trouble, why don't you just fire me" I said, "but make sure that you put down the appropriate reasons on the card."

He asked me what the appropriate reasons were and I said "You darn well know it is because of the Union."

He claimed that he knew nothing about a Union and I said to him "How can you have three of your people be discharged from your department without asking any questions about it?"

- Q. Do you recall him saying anything else? A. I know there was more but I can't recall that now.
- Q. Do you recall any mention of what your job would be at Levittown? A. Oh, yes, he did tell me that if I—when I went to Levittown I was to be an assistant manager and that I would be given an increase, and I told him that I still didn't want the job offer there.
- Q. What did he say? A. He said he was sorry but he had to do it.
- Q. What else did he say? A. He told me that Carl Igloi would be bringing me to the store and bringing me home from the store because I did not have transportation.

[280] Q. What did Mr. Kreiner say? A. I had asked Mr. Kreiner to find out why I had been transferred to begin with.

Judge Cohn: The question was what did he say?

- Q. What did Kreiner say during this meeting that you recall? A. I don't recall.
- Q. Did he make any suggration as to transportation? A. Yes, he suggested that he have some of the employees bring me to and from work but their hours didn't jibe with my hours so that was an impossibility.
- Q. Did you state that? A. Yes, and I also told them that I could not afford a \$25 a week taxi fare.
- Q. What did Kreiner say? A. Well, he told me that I shouldn't expect to get an increase of \$25.

- Q. Was anything resolved at this meeting? A. I had informed him that it had been Mr. Katz who had transferred me and he was going to get in touch with [281] Mr. Katz.
- Q. Who said he was going to get in touch with Katz? A. Carl Igloi asked Mr. Kreiner to get in touch with Mr. Katz.
- Q. And then what happened? A. Well, I left and Mr. Kreiner told me that he would get back to me.
 - Q. Did he do that? A. Yes, about 20 minutes later.
- Q. Where? Where did he speak with you? A. Downstairs in the Display Department.
- Q. What did he say to you? A. He told me that he had spoken with Mr. Katz and that I had been transferred back to the Massapequa store.
- Q. And thereafter did you return to the Massapequa store? A. Yes, on July 2nd.
- Q. Did you return to your regular job or different job? A. My regular job.
- Q. When did you get your last increase, wage increase? A. About a week ago before I was dismissed.

[283] Q. Did you testify at the NLRB hearing? A. Yes, I did.

Q. Did there come a time when you were at Massapequa when you found detectives were following you around? A. Yes.

[284] Q. When did that begin? A. In April.

Mr. Miller: April '73.

Q. In what year was that? A. April, '73.

- Q. Did this happen before? A. No.
- Q. Were you told why anyone was following you at that time? A. No.
- Q. Were you ever accused at any time before August, '73 of doing anything improper? A. No.
- Q. Were you ever complimented for your work, aside from the time you testified with regard to Gail Schulman? A. Yes.
- Q. Who complimented you? A. Mrs. Schulman, Charles Hord, Lou Manzi.
- Q. Let us take Hord first. What did he tell you? A. Well, he was very pleased with the murals that I had done upstairs in the cafeteria and many of the departments I did art work for such as the Record Department.

He was pleased with the way that it turned out and the Infants Department.

- [285] He was pleased with my work upstairs in the Boutique.
- Q. When were these compliments made? Do you remember the dates or the approximate dates? A. Whenever the job was finished.
- Q. As late as how recently before your discharge? A. I can't recall a date.
- Q. How long before, to the best of your recollection? A. Well, usually my work was observed and it was done and it was commented on at that time.
- Q. Were you ever criticized for poor work performance? A. Only insofar as the amount of time that it took me to do a certain job.

They wanted it done in a faster length of time.

Q. How about the actual finished product, were you ever criticized for poor work? A. No.

Judge Cohn: I don't see the relevancy in all this, Mr. Appell.

That is the reason we tried to clear this up this morning so as to obviate—

Mr. Appell: Your Honor, if this employee was a superior employee, as General Counsel is seeking to show, it might negate any other reason why allegedly Respondent discharged this employee, so I think it does become relevant.

[286] Judge Cohn: If the Employer discharged this employee for the reasons asserted I don't think that I would say whether or not the employee is a superemployee or just a competent employee.

She worked for the company after all for several years.

I don't think that that would be too weighty as far as I'm concerned, for that reason.

Go ahead.

Q. (By Mr. Appell) When you first noticed detectives following you around in April do you know who they were? A. Mary Fine and Margaret. I don't know what her last name is.

Judge Cohn: Is that Mary Fine?

Mr. Miller: Now we know it is Eckert.

The Witness: That is the way I knew her as.

[287] Q. (By Mr. Appell) How many times during April did you see these detectives following you? A. Enough that it was observed. It was obvious that they were following me around.

Q. Where do they follow you? A. Well, in the work that I did, I traveled throughout the store and it seems as though whenever I turned around I was falling over one of them.

- Q. How about in May, did this continue? A. Yes, it did.
- Q. How about in June while you were in Massapequa? A. Yes.
- Q. When you returned in July did it continue then too? A. It became a constant thing by the time I returned from Levittown, yes.
 - Q. After your vacation did it continue? A. Yes.
- [288] Q. How far behind were they? A. They were always in the vicinity, close enough. I mean—
- Q. Are you able to give an indication of how many feet away they were? A. 20 feet, 30 feet.
 - Q. Did they ever talk to you? A. No.
- Q. Did they ever tell you why they were doing this? A. No.
- Q. How about when you were at a window doing displays, did you ever notice them watching you? A. At the display windows, the windows are located by the entrances and there's a security guard there, a uniformed security guard.
- Q. So all the time in other words? A. He was posted there so actually there wasn't any reason for them to be there at that particular time.
- Q. How about when you were in the lunchroom? A. Yes, they were up there.
- [289] Q. During what months did you find them up there when you were up there? A. From April to June.
- Q. Thereafter did there come a time when you stopped eating lunch in the cafeteria? A. Yes.
 - Q. When was that? A. In the summertime.
- Q. How about when you went to the ladies' room, did you find them following you there too? A. No.

Q. From July 30th until August 21st on the average how many times a day, different times, did you notice them following you? A. It wasn't always the same ones during the course of a day.

A lot of times they worked in pairs and one pair would follow me for a couple of hours in the morning and the afternoon another pair would follow me, in the afternoon.

- Q. Were these uniformed or plainclothes? A. Plainclothes.
- Q. Did you recognize any people other than Rousseau and Fine? A. Yes. I don't know what their names are though. [290] Q. Male or female? A. Male.
- Q. During this period of July 30th through August 21st to your knowledge were any other employees similarly followed? A. I never spoke to other employees other than I made Evelyn Upton aware.
- Q. Do you know if other employees were similarly followed the way you were during that period, anyone else in your Display Department? A. Not that I know of.

[293] Excerpts of Stenographic Transcript of Hearing of December 20, 1973.

Before: ROBERT COHN,

Administrative Law Judge.

Appearances:

Stephen E. Appell, Esq., Counsel for the General Counsel.

[294] Seymour W. Miller, Esq., Miller & Seeger, Esqs., 600 Madison Avenue, New York, New York, Appearing on behalf of the Employer.

William E. Seeger, Esq., of Counsel, Miller & Seeger, Esqs., 600 Madison Avenue, New York, New York, Appearing on behalf of the Employer.

[296]

PROCEEDINGS.

LAURA GRIBBINS, a witness, called by and on behalf of the General Counsel, having been previously sworn, testified as follows:

Direct Examination:

- Q. (By Mr. Appell) Mrs. Gribbins—Miss Gribbins, at the time—up to the time that you were discharged do you know—did you know an employee named Paul Warwel, W-a-r-w-e-l? A. Yes, I did.
- Q. And what did he do? A. He worked in the display department.

He did window displays, interior displays. He built display props.

Q. Was this the same work that you did or was it different and can you explain how it was different if it was? A. Well, he did carpentry work along with display work, which I was not involved in.

But as far as the display work, yes, we did the same work.

[307] So I went downstairs to the punchout cards, and I got my pocketbook, and I went to the phone to page Lou Manzi to tell him I was going out of the building because the cafeteria upstairs was closed.

But I could not get him; the phones were tied up.

So I went upstairs to talk to him because I knew [308] he was at the window.

But as I was going up there I decided I better not leave the building because that would be a reason for them to dismiss me.

I turned around and walked back downstairs and I noticed I was being followed by security, and I gave my handbag to the man at the desk.

At that time-

Hearing Officer: Which desk?

The Witness: There is a desk by the punch cards where people can put their personal property and they are given a ticket so that they can pick it up when they leave.

I gave the man my handbag and he gave me a ticket and I walked out to go upstairs to do my work.

When I got outside the stationery department, Marie Fine stopped me and she said that I had been observed carrying my handbag out on the floor, so I explained to her that I felt that I was being intimidated by Mr. Kaye, and that I wanted to go out, but I decided not to.

She then asked if I would show her my pocket book and I said okay.

And we went back to the ckeck out desk, and I emptied out my pocket book for her.

In my pocket book was a body suit that I had bought [309] the previous week and that I was intending to wear when I would go out.

[313] Q. Is this common practice to do that or is this something you thought of? A. Yes.

Q. What is that? A. To hand your personal property over to this man.

He gives you a ticket for it.

Q. When did you first put that body suit in your pocket book? A. I had brought that from home.

[314] Q. When? A. That morning.

Q. What color was that? A. It was green.

Q. And was it wrapped in anything or was it just out—A. I had it in a plastic bag so that if anything spilled in my pocket book or anything it would not be dirty.

Q. Does Mays sell body suits in such plastic bags? A. They usually hang them on a rack, on a hanger.

Q. Where did you get the plastic from? A. I brought that from home?

Q. Did it have any marking on it of any kind, do you recall? A. No.

Q. You said something about using it to go out.

When were you supposed to go out? A. I was supposed to go out that evening.

Q. Have you ever done that before that time to bring something from home to change? A. Yes. In fact since the

first day that I worked in Mays my managers had also told me to have a change of clothes in my locker in case I was wearing a dress and I had to go up on a ladder so it was a common practice of mine to have my clothes in my locker or bring them from [315] home.

Q. All right.

The body suit that you purchased, did you purchase that pursuant to an employee's discount? A. No. I did not get my discount on it.

[316] Q. Was such—

Hearing Officer: You did not get your discount what?

The Witness: I did not get my discount on the body suit when I paid for it.

Hearing Officer: Do you normally get a discount? The Witness: You have to go through a regular routine.

They do not do it there at the cash register. You have to go running around upstairs and—

- Q. How long does it normally take to get your discount? A. It takes quite a while. They have it set up so that it is a complete inconvenience for the employee.
- Q. How much is the discount? A. I believe it is ten percent.
- Q. Did you normally use the discount when you buy things? A. No.

[317] Hearing Officer: I do not understand that question.

There is no complaint about the use of handbags in the store.

The only rule that the witness has testified to is that if you carry—do not carry it on the floor you check it in with the security.

- Q. Were you aware of that rule, before this date, that you were not to carry a handbag on the floor? A. While working we were not supposed to have a handbag.
- [331] Q. What did Mr. Kaye say after that? A. He told me that I could pick up my pay on Thursday, and that I was to give my locker key and my bag to Marie Fine.
- Q. And what happened then? A. I left. And Marie Fine accompanied me downstairs where I gave her my locker key and my bag.
- [332] Q. By the way, while you were employed with Mays, were you ever aware of any kind of a rule against soliciting on company time and premises? A. No rule against it.
- Q. Do you know of an organization called the Mays Employees Association? A. Yes.
 - Q. Were you a member of that? A. No.
 - Q. Did anyone ever ask you to join it? A. Yes.
 - Q. Who was that? A. Lucille Tedeschi.
 - Q. Who is she? A. She is the second floor manager.
- Q. When did she ask you to join the Mays Employees Association? A. She asked me several times, because I never did join over the years.
- Q. When was the last time she asked, do you recall? [333] A. When they asked me to run for M.E.A. president.
 - Q. When was that? A. Last year.
 - Q. '72? A. Yes.
- Q. Who asked you to run for M.E.A. president? A. Lucille.

Q. What was her title with the M.E.A. at that time, if any, if you know? A. I know that she had been part of it, such as recording secretary or something, but I do not know if she was that particular year.

Q. When she asked you to join, what did she say? A. She told me they sent flowers to people that were sick and if there was death in the family, there was also some kind of acknowledgement made by the M.E.A.

[335] Q. When Miss Tedeschi spoke to you about joining the M.E.A., was this on working time or on breaks and if it was both, can you explain how many times each? A. There was an M.E.A. meeting held upstairs in the cafeteria, and she asked me at this meeting.

Q. Any other time?

Hearing Officer: You said—that still does not answer the question.

A. That was done during working hours.

Q. How about the other times?

You say she came several times. A. Well, she asked me several times if I would join the M.E.A.

Q. During what part of the day on each case? A. This was during working hours.

Hearing Officer: Has it been established—Did you [336] say this is Lucille somebody?

The Witness: Yes, sir.

Mr. Appell: Tedeschi.

Hearing Officer: Has it been established she is a supervisor?

Q. ,You testified she is a second floor manager? A. Second floor manager.

Q. What to your knowledge, does she do?

Hearing Officer: Why don't you ask counsel whether he is willing to stipulate whether or not she is a supervisor?

Mr. Appell: I would call upon counsel for Respondent to stipulate that Lucille Tedeschi is a supervisor within the meaning of the Act.

Mr. Miller: Yes. She has some of the indicia of supervisory—of a supervisory definition of the Act, and therefore I have to concede that she is a supervisor.

Q. Do you have any personal knowledge of any other solicitation by one of employee of another during working time at Mays aside from what you have testified to as to [337] Lucille? A. I do not understand the question.

Q. All right.

Aside from what you have already testified to, do you know of any other time when any employee came up to another at Mays and asked them to contribute to something or to join something? A. Other than the M.E.A.?

- Q. Other than when Lucille asked you. A. Well, there were baseball games and things of that sort were always going on.
- Q. And can you explain that? A. Well, there were outings, going down to Pennsylvania or—

Hearing Officer: Tell us what happened Miss Gribbins as to how that became known to you.

The Witness: Well, it was done in an advertising sort of way.

The people that were interested in going on these trips would make posters and hang them up, so that the

people in the store would be aware of the conditions for you to participate in the event.

- Q. Where was such poster hung? A. Down by the checkroom, upstairs by the money room.
- Q. Did you ever see anyone ask anyone on working time [337/A] to go to such outings? A. Oh, yes.
- Q. Do you remember when that was? A. Whenever a certain event was to take place, people would talk about it on working hours, and whoever was in charge would collect money for it, if money was to be collected.
- Q. Did you ever see that take place? [338] A. Yes. In fact, I went on one of the outings.
- Q. When was that? A. I believe it was in the early spring of this year.
- Q. What kind of an outing was it? A. We went to Pennsylvania.

Mr. Miller: Objection.

The fact that she went on an outing has no possible relevance to the issue of solicitation on company time, and what for, and when and under what circumstances.

Hearing Officer: I think you have carried that about far enough, about what kind of outing it was.

- Q. Who was it that did the collecting for that outing, Miss Gribbins? A. It was one of the officers of the M.E.A.
- Q. And when did you contribute the money for that, do [339] you recall?

Hearing Officer: She said in the spring.

Mr. Appell: I am saying what time of the day.

A. It was during working hours.

Mr. Appell: I have no further questions, Your Honor.

Thank you.

Mr. Miller: We are going to be kind of lengthy, so if you want to take a recess now Your Honor it is up to you.

Hearing Officer: I was going to ask the reporter.

CROSS EXAMINATION:

Q. (By Mr. Miller) Now, Miss Gribbins, I believe you testified that you were in Mr. Kaye's office on August 20th and on August 21st? A. Yes.

Q. August 20th was the day that you were told to go up there and you were asked questions about certain body suits?

A. Yes.

Q. Is a body suit the same as a blouse? A. Similar.

Q. Well, when you say body suit, don't you also mean a blouse?

For the purpose of this— A. Yes.

Q. And you have-

Hearing Officer: I thought a body suit was-

A. Yes.

Q. Now, you then said that you had a discussion there with Mr. Kaye and who else was there? A. Marie Fine, Margaret, Charles Hord.

Q. Now, I like to get in to more of that conversation. Now, were you discharged that day? A. No, I was not.

Q. Were you given a written warning? A. I was told that the paper that I signed would be going into my folder as a misconduct.

O. I see.

And then you were—and then you were told to go back to work? A. Yes.

[341] Q. Well, and you did not tell them that you knew what this was all about, and why didn't he tell you the real reason for all this trouble?

You did not mention anything like that to Mr. Kaye at the time? A. What do you mean by real reason?

Q. Didn't you tell-let's go back to June 19th.

You testified, didn't you, that when you were to be sent to Levittown, that you told Mr. Hord why doesn't he in effect give you the real reason for transferring you, that he really wants you to quit because of your union activities, didn't you tell Mr. Hord that? A. Yes, I did.

Q. Did you say something like that to Mr. Kaye in August? A. I may have, but I do not recall it right now.

I may have said it when I was up there in that office. I was mad.

- [345] Q. Now, on or about the time that you were told you were going to get a raise, weren't you told that the reason for the raise that you were going to do this work in Levittown, and in Woodmere? A. Yes.
- Q. So the reason for the raise was for you to do that? A. Yes.
 - O. I see.

You say you did not get the raise? A. Not until quite some time later.

- Q. Now, Miss Gribbins, do you recall testifying in a case before, held in this Region with respect to petitions for an election? A. Yes.
- Q. Do you recall in fact testifying on July 23rd, 1973? A. Yes.

Hearing Officer: What is the case number? Mr. Miller: Case number is 29-RC-2287.

I would like to show counsel that I am reading here from page two hundred of the transcript and I would like to read this to you and ask you if this refreshes your memory?

Q. First I would like to ask you to listen to what I am saying and I am asking you if that is in fact your [346] testimony.

"Question: Okay. Now, when you were sent dash strike that please.

"In or about February of 1972, were you given a raise?"

"Answer: Yes, I was."

"Question: And on or about the time that you were given that raise, weren't you assigned to work to do Boutique work, trimming work, more precisely in Woodmere and Levittown, as well as Massapequa?"

"Answer. Yes."

"Question: And wasn't that the reason you were given the raise?"

"Answer: Along with that raise I was also promised transportation to and from these stores."

Do you recall that? A. Yes.

Q. So, now, I ask you if that testimony as to the fact that you were given a raise on or about the time that you were reassigned, do you wish to change that testimony? A. I was told I would be given a raise when I started going to Woodmere and Levittown.

I did not receive the actual raise until several months later.

Q. Now, do you recall receiving a raise on February 25th, 1972? [347] A. I do not recall the date.

I do not know what dates were that I received raises.

Q. Well, now, are you telling us that this testimony that I have read was incorrect? A. No.

[355] Mr. Miller: My point here, we will go into her other testimony, the word I put in quotes, testimony, but the point is now for me—my point is not so much—is not so much to talk about the assignments, whether it was a transfer or not.

I have gotten over that point.

My point is to show there was a constant discussion and complaints since February of '72 and to show there was all sorts of arguments going on with all sorts of opportunities to get rid of this person on the transportation question.

We did not have to invent this. That was my point here.

Now I am trying to get to that transportation problem and this other business of going to Levittown and all of that sort of stuff is important to me only to get the transportation dispute question into focus.

Hearing Officer: However it is important to you, that is your own privilege, and I merely suggested to you that it seems to me at this point, and maybe I am wrong because I just hear the case as it goes along, I was under the impression that the transportation problem which you [356] assert to is part of the transfer of this lady to these other stores.

And that certainly is an issue in the case.

And I did not understand when you said that you did not think it was an issue in the case.

What do you mean by that.

Mr. Miller: I said I did not think the fact that she worked in other stores was going to be a contested fact.

What I was trying to focus on was that there has been, as you will find out, a constant bickering about this transportation whereby if we had wanted to get rid of her we could have gotten rid of her a long time ago on that alone.

[359] Mr. Miller: I just want to say one more thing. I just want to say one more thing, I will never say that because he kept quiet he agreed with my points. I understand that.

I merely suggest that reference to the way I have proceeded has to be viewed in the light of the way this case has been presented.

Everything is dumped into one thing, nothing is segregated out, and I was put in the position of having to reveal my defense without knowing how, what when there, what's going to come out with what witnesses and what material is going to be brought out with what witness.

And I had to do that just because I had to show why some of the things I was asking were material.

Now, to go ahead then and say that I have engaged [360] in argument when I was merely trying to explain my position is to misconstrue what I have been trying to do here.

FURTHER CROSS EXAMINATION:

- Q. (By Mr. Miller) Now, you were assigned to Levittown during the summer of 1973, were you? A. I was transferred there.
 - Q. That was a transfer? A. That was a transfer.
 - Q. I see. And did you get a formal transfer paper? A. I

didn't know of any such transfer papers. I was told the was being transferred to Levittown.

- Q. I see. And you were there for how long? A. I was there for two weeks.
- Q. Now, I believe you testified that upon your transfer you were also given certain promises, right? [361] A. Yes.
- Q. So that your transfer to Levittown as you put it, would be accompanied by a raise? A. Yes.
 - Q. And a promotion? A. Yes.
- Q. You were in Levittown two weeks. Just before you went to Levittown did you—during the summer or let's mention back in the year 1973. You were in Levittown when now exactly, do you remember at this point? A. From June 20th to June 29th.
- Q. And before that? A. I don't recall what the dates were that I had done this favor for Carl Igloi.
- Q. How many days were you— A. I was there approximately two days.
 - O. I see.

Hearing Officer: Did you say that you were at Levittown in the summer for two weeks?

The Witness: Yes.

Hearing Officer: From June 20th to June-

The Witness: To June 29th.

Hearing Officer: Well, that doesn't seem like two weeks the way I figure it.

The Witness: Well, June 20th was in the middle of a [362] week and—

Hearing Officer: You mean were there about ten days?

The Witness: I was there two or three days the first week because the transfer occurred in the middle of a week and the following week I was there two days be-

cause my grandfather had passed away, I did not go into work Monday, Tuesday and Wednesday of that week.

Hearing Officer: Go ahead.

- Q. I take it you actually worked in Levittown some four days? A. Four or five days approximately.
- Q. Then after you came back from what you say in this transfer, then what happened to you? A. Mr. Hord asked me what I was doing back in the store, back in the Massapequa Park store.
 - Q. I see. Was he annoyed? A. Yes, he was.
- Q. When was it that he was annoyed? A. The Monday I returned to the Massapequa Park store he came in at around ten o'clock and I was paged shortly thereafter.
- Q. I see. Well, now, about a week later didn't you get a raise? A. Yes, I did.
- [363] Q. Let me see if I understand, you came back, you were transferred, you came back, Mr. Hord was annoyed, and then you got a raise? A. The raise that I received was the raise that I had asked—that I had talked to Mr. Hord about previously on June 12th or 11th—11th or 12th because I was due for a raise.
- Q. Well, now— A. That was not the raise that was talked about as far as being assistant.
- Q. When you say you were due for a raise, how do you mean you were due? You mean—was there a regular—A. Mr. Hord had informed me that I was getting a raise. And I was supposed to get it at a certain time. And since I had not received it a short time after that, I asked Mr. Hord about my raise.

And he said that he would look into it. And this conversation was held on June 11th or 12th.

Q. Well now, didn't you also get a raise in March of 1973?

A. I had gotten quite a few raises while I was working in Mays. I don't remember the exact times as to when I got these raises.

- Q. Now, how much was this raise that you got in July of 1973? [364] A. I believe it was ten dollars.
 - Q. Ten dollars per week? A. Yes.
- Q. I see. And as I recall your testimony you were given this raise some three, three and a half months after you were starting in to be followed by security: is that correct? A. I was started to be followed by security in April.
- Q. I see. Yes. Do you recall getting a raise of ten dollars a week March 24th, 1973? A. I don't recall specifically.
 - O. I see. A. Not at this time.
- Q. But you know you got a raise before July 1973, during the year, 1973? A. I may have.
- Q. Now, at the time you were hired did you get a booklet from Mays? A. Yes, I did.
- Q. I see. Do you recall what the booklet said in there about soliciting on—and do you recall what the booklet said with respect to working—doing your work when you are supposed to be in working hours or on working time. A. I read that book when I was first given it, and [365] four and a half years ago, I can't remember what was said in that book.
- Q. You can't remember back four and a half years ago what was said in the book? A. It wasn't too much said in the book that was of any importance.
- Q. Just for my own information, Miss Gribbins, you seem to remember an agreement with Mr. Manzi some four and a half years ago.

Mr. Appell: Objection. Argument. Hearing Officer: Sustained.

Q. 'Now, I believe you testified that your card, which is

General Counsel's Exhibit 9, was given to you by Mr. Brandt? A. Yes.

- Q. He gave it to you while you were in the elevator? A. Yes.
 - Q. I believe you testified you filled it out? A. Yes.
 - Q. And you asked him for certain information? A. Yes.
 - Q. And he gave you that information? A. Yes.
 - Q. And all that took place in that elevator ride? A. Yes.
- [366] Q. Now, you were going from what floor to what floor? A. From the basement to the top floor.
- Q. So that it is your testimony I take it that you were handed the card, you filled it out and you had a discussion about the benefits of the union.

And you did it all in the course of this elevator ride from the basement to the third floor? A. The elevators move a lot slower over in Massapequa than they do in this building.

- Q. Could you just for our information estimate the time that it takes to go from the basement to the third floor? A. I don't know. I couldn't give you a time.
- Q. Well, now, who else was in the elevator at the time? A. There was myself, Mr. Brandt and Mrs. Mitchell.
- Q. There was no Mr. Kaye or Mr. Zayle anywhere around? A. No.

Hearing Officer: Who is Mrs. Mitchell?

The Witness: She runs the elevator.

Hearing Officer: Oh.

Q. Did Mr. Brandt address any remarks to Mrs. Mitchell? A. Well, she knew about the union, so he was making a broad statement as to—he wasn't whispering what he [367] said to me.

Q. I see. You had not been approached, as I understand it, not withstanding your knowledge, until June seventh? A. Not until that time, no.

[368] Q. I believe you testified that Mr. Hord warned you to stay away from these people? A. He asked me if I was aware of a union being organized, an organizational campaign, and I told him yes, I was aware of it, and he told me—he asked me not to become involved.

[371] Q. Now, I believe you testified with regard to—I will strike that. Did you have a conversation with Mr. Brandt in the hardware department on the morning of June 12th, on or about June 12th, early in the morning? A. Yes.

Q. I see. Is your best memory of that conversation—strike that.

Do you recall that that conversation took place on the morning of June 12th or June 11th or don't you remember? A. I know it was on a Monday morning. And at the time that I gave—I made my statement I did not know which day—whether it was the 11th or 12th.

[372] Q. I see. It was on a Monday however, you are certain of that? A. Yes, it was. Yes.

[380] Q. Now, after you had suggested to Mr. Hord that he get on with it, and get rid of you for the real reason, to wit, your union activity, I believe you testified he made you an offer?

Didn't he offer you a raise? Didn't you so testify? A. Yes.

- Q. Then he offered you an assistant managership? A. Yes.
- Q. That was after you told him to get on with it? A. He claimed he knew nothing about a union.
- Q. And then you said to him, well, you should know though you lost three of your people? A. Right.
- Q. Then after that he offered you a raise and a promotion? A. He told me that I was being transferred to Levittown, and when I was in Levittown I would be an assistant manager and I would receive an increase.

He did not know at that time that I had signed a union card.

- Q. Well hadn't he the week previous to that, warned you to stay away from the union? A. Yes. But he did not know whether I had signed a [381] union card or not.
- [384] Q. I see. Now, I believe your testimony was that you were starting in to be followed by security as you put it around April of 1973? A. Yes.
- Q. Did you ever make an attempt to find out why you were being followed in April of 1973? A. No.

O. Now-

Hearing Officer: On that point, did you ever ask anyone in management?

The Witness: I informed Mr. Hord that I had been [385] constantly under surveillance by security, I told him this.

Hearing Officer: When did you do that?

The Witness: It was sometime in June or July, around that time. Because by this time it was becoming unbearable and I was just plain aggravated with it.

Hearing Officer: What did he say?

The Witness: He said that he hadn't been aware of it, but all right, so now he knew. I don't know whether he ever did anything about it or whether he inquired

about it. I just informed him that this was what was happening.

- Q. Could you tell us why you waited so long to do that? You were being followed in April. This is three months, four months later? A. I wasn't doing anything wrong so if they wanted to follow me let them follow me.
- Q. It didn't bother you? A. It bothered me when it became that I was falling over them every time I turned around, that's when I told him.
- Q. When did this—do you—when did this fall over the security start?

You weren't falling over them in April, were you? A. It was more noticeable in April, but it gradually [386] became more, more so.

- Q. Let's go to the period of let's say August, three or three weeks, you were being followed real hard then, weren't you? A. And I aware of it, yes.
- Q. Who was following you? A. It was various people in the security department.
- Q. For example, was it Mary? A. Mary Fine followed me several times.
 - Q. Did she do most of the following? A. No.
 - Q. Who did most of the following? A. Margaret.
- Q. Now, who did most—then that's true for August, did you say? A. For most of the time.
- Q. Oh, it was also true for July? A. I noticed her more so than any of the others, yes.

Mr. Miller: Your Honor, may the record show that I was just articulating towards Margaret Rousseau, and Mary Eckart, also known as Fine, when I was pointing during the course of my questioning of Miss Gribbins, that I pointed to those two ladies who are present in this room.

Q. Now, I believe you testified that when you-

Hearing Officer: You want—are you going to [387] leave that subject?

Mr. Miller: Yes.

Hearing Officer: There's one question I like to ask. Is this statement you made to Mr. Hord in June, is that the only time you ever had a conversation with any representative of management about this following?

The Witness: Yes.

Hearing Officer: Thank you.

[411] Q. I see. Now, let's talk about this handbag thing. You said you had to turn your handbag in at a certain checkroom; is that correct? A. I said I had done it.

Q. Yes.

Now, do you know what that rule is? A. No.

- Q. You do— A. J don't know if there is a rule. I don't understand.
- Q. Have you ever turned in your bag at a certain checkroom? A. Sometimes. Sometimes I would put it in my locker.
 - Q. Oh, you have a locker, too? A. Yes, I do.
- Q. I see. Now, I believe you testified that there was a rule that required that when people work they don't [412] carry handbags on the selling floor? A. Yes.
 - Q. Do you know where that rule came from? A. No.
- Q. But you know that it's been there? A. I was made aware of it—I really don't understand what you are getting at.
- Q. I am trying to find out how you learned about that rule? A. Well, nobody specifically told me that you are not supposed to have your handbag. When you are employed with the company, the women don't use their handbags out on the floor. I don't—

Q. You just see that it happens that way; is that correct, and then you assume that's the rule? A. Yes.

[414] Q. Now—and where was this handbag being carried from? A. From my locker.

Q. And you were about to go out with it? A. Yes, I was.

Q. I see. And therefore you checked it? [415] A. I took my handbag because I wanted to go out for a cup of coffee because my nerves were shot.

Q. I see. And this handbag that you took— A. Yes.

Q.—did you propose to check it someplace? Or did you want to take it with you to go outside of the store? A. I had my money, and my belongings in there, yes, I wanted my handbag.

Q. Well, was that within the rules? Would you say that was within the rules to take the handbag in the middle of the day and go out with it? Were you allowed to do that? A. I was going to inform Mr. Manzi that I was going out, I was leaving the store to go and get a cup of coffee, and I had my handbag with me.

Q. I see. You first picked up the handbag and then you were going to call Mr. Manzi? A. Yes. I was at the check-out point.

Q. You never reached Mr. Manzi? A. Not on that telephone, no.

Q. I see.

Now-

Hearing Officer: What point of time is this? Was this after lunch?

The Witness: Yes, it was.

[416] Hearing Officer: This is after you came back from lunch?

The Witness: Yes. This was after I returned to merchandise to the departments.

Hearing Officer: Then what happened with the handbag?

The Witness: You see, if I had reached Mr. Manzi on that telephone, there's a stairway right there and I would have gone out that stairway.

I would not have gone out on selling floor but because I couldn't reach Mr. Manzi on the telephone I went on the selling floor because I knew he was upstairs in the window, that I had my handbag with me.

Hearing Officer: I don't quite understand your answer. If you had reached Mr. Manzi what would have happened?

The Witness: If I had reached Mr. Manzi on the phone I would have gone through a door with staircases right there.

It's the employees entrance. I would have not have gone at all out on the selling floor.

Hearing Officer: Why not?

The Witness: Because the doorway with the stairs is before the selling floor. It's a doorway entrance on the selling floor.

[417] Hearing Officer: Where were you going?

The Witness: I was going out of the store to get a cup of coffee because cafeteria was closed.

Hearing Officer: What I am getting at is, what did not having gotten Mr. Manzi have to do with whether you went one way or the other?

The Witness: Because I couldn't reach him on the phone, and since he was my superior, I wanted to inform him that I was leaving the building.

And I knew that he was upstairs in the window, and

since I couldn't reach him on the phone I walked up there to tell him.

Hearing Officer: You were going—oh, I understand. All right.

Go ahead.

Q. Why didn't you use that exit anyhow? A. Because I couldn't get ahold of him on the telephone.

Hearing Officer: That was the same question I had and the answer is because she wanted to—since she couldn't get him on the phone she was going to tell him in person and she went across the selling floor rather than—

- Q. Did you then tell him in person? A. No. When I got—I went up the store escalator and I was in the ladies sportswear, right before the ladies [418] sportswear department by the cash register over there. I decided better about leaving the store because I felt that this may have been a grounds for my dismissal, immediate dismissal, so I turned ground and I went back downstairs.
- Q. Well, now, this was after the incident with Mr. Kaye? A. Yes.
 - Q. Right.

So Mr. Kaye had much to say about this merchandise and everything else and you were not dismissed, were you, on August 20th? A. This was before I was brought upstairs to Mr. Kaye's office.

Q. This was before? A. Yes.

[420] Q. By the way, when you said that lunchroom was closed, did you try to go up there or did you know it was closed? A. I know it was closed.

Q. You didn't know the lunchroom might have been open? A. They wouldn't have allowed me in at that time.

Q. You didn't know about the M.E.A. possibly running the lunchroom? A. I knew they were running the lunchroom but at three o'clock in the afternoon if I wanted a cup of coffee, people were allowed to go in at four o'clock, I believe the time was, to go in and have their break at that time because the people running the M.E.A., they had their own jobs to do.

That cafeteria was closed at certain times.

Q. I thought you said it was closed at summertime? A. The women that normally run the cafeteria for hot food and what not, that market was closed. It was just cold cuts up there.

Q. And coffee? A. And coffee, yes.

[421] Q. I believe you said you did not take the discount? A. No, I did not.

Q. I know. I believe you said you didn't get the discount? A. I didn't—I did not fill in the forms for a discount.

Q. When you said you didn't get the discount you mean to say you didn't ask for the discount; is that correct? A. If you want a discount—

Hearing Officer: I understand what the testimony is, Counsel, that she didn't try to go through all the [422] procedures necessary to get the discount. She just bought it at the store.

Mr. Miller: I also want to delineate, if I might, that's just the position between the testimony, "I didn't get the discount", and what the story was—

Hearing Officer: Whether she used the word get or not, I don't know, but I understood her testimony to be just what she said, that is she didn't go through the procedure.

- Q. How much is this discount? A. I believe it's ten percent.
- Q. Have you ever gotten a discount before? A. Yes, I have.
- Q. You always get discounts? A. No. The only time that I use the discount was when a friend of mine was an assistant receiving manager and management personnel can get that money immediately or within the next day.

Other people have to wait for it to come in their paycheck.

- Q. So that— A. And it was only on a large item.
- Q. So that consequently the—so as it turns out, then, there is no—you have made it a practice recently not to get discounts? [423] A. I never did. Not unless I gave—I asked a friend of mine to get it for me so that I could get it faster rather than going through all the procedure because management doesn't have to fill in all those forms.
- Q. Well, in the course of your conversation that afternoon in Mr. Kaye's office, didn't you say you never take this discount? A. I told him that I did not take a discount on that piece, and he asked me—he said to me, I am paid a larger salary than you and I always get my discount.

And I told him that I felt that the discount system, the way it is set up in the store, is made specifically to deter the employee from taking the discount from going through the problems of getting the discount because if that paper isn't filled in properly, or you make one little mistake, it's sent back, and you have to go through the whole thing all over again.

- Q. You prefer not to take the ten percent discount? A. Yes.
- Q. And you have made a lot of purchases at Mays recently? A. As normally as any other time.
- Q. I am asking you— A. It was convenient for me to shop there.

- Q. You still did not wish to take a ten percent discount? [424] A. No.
 - Q. What is your salary, Miss Gribbins? A. At that time?
- Q. When—at the time you were discharged, yes. A. At the time I was discharged it was one forty.
- Q. Then when you got the last raise it was one thirty; wasn't it? A. Yes.
- Q. And before that it was less than that? And you still did not take the ten percent discount available to you? A. No.
- [425] Q. Now, at that point in the meeting did you—did Mr. Kaye ask you to explain the presence of that blouse in the bag? A. Yes, he did.
- Q. And did any other subject come up? Apart from the blouse in the bag? A. Are you referring to my walking with my handbag on the floor?
- Q. Yes. I am referring to that. Now was any other subject apart from that handbag, blouse incident, did any other topic get discussed? A. As far as my taking merchandise out of the—that was on the paper.
- Q. Yes. A. That was on the paper. That was not discussed until it was put in front of me on the paper, and I read the paper.
 - Q. That was that afternoon, wasn't it? A. Yes, it was.
- Q. You didn't sign that paper, did you? A. Yes, I did.
- [426] Q. You did sign that piece of paper? A. Yes.
- Q. Did you say there was a personnel lady in there at that time? A. No. The following day I believe she was either there when I walked in or she was called in.
- Q. Do you recall who gave you the piece of paper, Mr. Kaye or Miss Marie? A. Margaret left the room for a short time and Mr. Kaye followed her out and then Mr. Kaye came back with the slip of paper.

Q. I see. Now-

Mr. Miller: Will you mark this paper, please, Respondent's 3, for identification?

(Above-referred to document marked Respondent's Ex. 3, for identification.)

Mr. Miller: You I please recognize the fact that I showed dexhibit to Counsel.

Q. Miss Gribbins, I show yo. Respondent's 3, for identification, and ask you if your signature appears on this piece of paper.

(Document handed to witnesses.)

- A. My signature is not on this paper.
- Q. This is not your signature, Laura Gribbins? A. Wait a minute. Yes, that is my signature. Wait a [427] minute, can I read it?
 - Q. Yes, by all means. A. Yes.
- Q. Is that the piece of paper that you signed that afternoon in the office? A. I believe so.
 - Q. I see.

Mr. Miller: Your Honor, I offer Respondent's 3, in evidence.

Mr. Appell: No objection, Your Honor.

Hearing Officer: Did you say no objection?

Mr. Appell: No objection. Hearing Officer: All right.

[428] Q. Well, in the end weren't you then told about the rules by Mr. Kaye? A. Yes.

Q. And it was put down on a piece of paper, is that correct? A. He told me that there were rules to be followed as far as taking merchandise out of the department at that time.

- Q. So at that time you knew about the rules; is that correct? A. I was informed, yes.
- Q. And then did not Mr. Kaye tell you, all right, Laura, we believe the blouse is yours? A. No, he never said that.
- Q. He never said that? A. He told me I could go back to work. I assume that they believed me.
- Q. Oh, but he never said it? A. Not to my recollection. [429] Q. But you still assume that he meant it; is that correct?

Mr. Appell: Objection. Hearing Officer: Sustained.

- Q. Was anything more said about the blouse that afternoon? A. No.
- Q. Was a demand made for you to return the blouse? A. To the store?
 - O. Yes. A. No.
- Q. Now, you then went back to work; is that correct? A. I returned my handbag to my locker, and by this time it was four o'clock and I went up on my break.
- Q. I see. You went to the cafeteria? A. I went back up to the cafeteria.
- [430] Q. By the way, in the course of the conversation with Mr. Kaye in the afternoon before, did you tell him that you thought that you were being harassed for union reasons? A. I don't believe I brought that up.

[435] Q. Now, did you interpret this no solicitation rule—I beg—strike that.

You testified before about M.E.A. people coming and talking about joining or attending ball games, I think you said with the ball.

Were the ball games under the M.E.A. auspices, too? A. I believe so, yes.

- Q. Do you know anything outside of the M.E.A. which allowed interruptions of work while you were at Mays? A. Yes.
- [436] Q. What were they? A. They had—the people in the building were asked to come up to the cafeteria to watch a film from the United Fund.
 - Q. United Fund? A. Yes.
- Q. Do you know of any noncharitable endeavors, no charitible things. We know about the M.E.A., now you have talked about the United Fund—A. The reason why I remember the United Fund was because it was a large promotion.

Mr. Miller: I would like to have this marked Respondent's 4 for identification, please.

(Above-referred to document marked Respondent's Exhibit 4 for identification.)

Q. Miss Gribbins, I show you Respondent's 4, for identification and ask you if you recognize what that is?

(Exhibit 4 handed to witness.)

- A. This is similar to the handbook that they give you when you are hired.
- Q. Now, I direct your attention to page 14, the paragraph marked "You, yourself", item number two, I would ask you, please, if you would, to read that for us and ask you then if you recall reading that in that book? Item number two? [437] A. There must be no solicitation or distribution of any sort during work or in any of the public areas of the store.
- Q. Do you recall reading that? A. No, I don't. For the simple reason I don't know if that is the edition I received when I received a copy because sometime after I had received original copy I had lost it.

And I had gone back upstairs to personnel and asked them for a new copy and they told me I could not get one because they were making a new edition.

- Q. When was that? A. I mean I was sometime last year.
- Q. What made you go up and ask for a new book? A. I was interested in profit sharing, what it had to say about the profit sharing plan.

[438] RE-DIRECT EXAMINATION

- Q. (By Mr. Appell) Miss Gribbins, who introduced Manzi to you as your superior? A. Charles Hord.
- [443] Q. Now, you testified to a United Fund meeting. Who told you to go to that meeting? [444] A. It was announced over the P.A. system that they were having a meeting upstairs in the cafeteria, and they would like everyone to please go up.
 - Q. What time was that? A. This was early in the morning.
- Q. What time was the meeting held? A. Around nine o'cloc'.
- Q. Did anyone talk to you about the United Fund after that? A. Yes.
- Q. Who? A. Well, management wasn't happy with the response from the employees, and they had a general meeting down at the information desk where he—Mr. Kaye said how disgraceful our contributions had been.
- Q. When was that meeting held, what day or what time? A. I don't remember.
- Q. Do you remember what time it was? A. It was in the morning also.
- Q. Was it during a coffee break? A. It was around nine o'clock, a general meeting.

C. Lynch, for General Counsel, Direct.

- Q. Is that coffee break time for me? A. For me it is but not everybody goes—has the privilege of coffee break.
- Q. So was this working hours for any of the people that [445] were present? A. Yes.
- Q. How about the first meeting of the United Fund, were people there on their working time? A. Yes.

[449] CHRISTOPHER LYNCH, a witness, called by and on behalf of the General Counsel, having been duly sworn, testified as follows:

Direct Examination

- Q. (By Mr. Appell) Mr. Lynch, may I ask you to keep your voice up so we can all hear you. Were you ever employed with J. W. Mays in Massapequa? A. Yes.
- Q. When had you worked there? A. I worked there two summers ago; I worked there Christmas and I have been employed there since May.

Hearing Officer: You are working there now? The Witness: Right.

- Q. What is your job at Mays? A. I am a porter.
- Q. What are your hours of work? A. One thirty to ten thirty.
 - Q. Is that P.M. or A.M.? A. P.M.
 - Q. Who is your supervisor? A. Harry Schob.

Mr. Appell: I ask the reporter to mark this as General Counsel's Exhibit 10?

[450] (Above-referred to document marked General Counsel's Ex. 10, for identification.)

Q. Mr. Lynch, I show you General Counsel's Exhibit 10,

C. Lynch, for General Counsel, Direct.

for identification. I ask you, is that your signature on the bottom?

(Document handed to witness.)

- A. Yes, it is.
- Q. Where it says name did you fill that in? A. Yes.
- Q. Social security number? A. Yes.
- Q. Address? A. Yes.
- Q. Home telephone? A. Yes.
- Q. Name of employer? A. I did not fill that in, "Massapequa Park".
 - Q. Type of work? A. Right.
 - Q. Present wages? A. Yes.
- Q. The date on the card, did you fill that in? A. Yes, I did.
- Q. Is that the date you signed it? A. Right.
- [451] Q. Who gave you the card? A. Red Murphy.
 - Q. Is he in the room now? A. Yes, he is.
- Q. Can you point to him? A. The gentleman sitting there with the red hair.
 - Q. Where did he give it to you? A. On the platform.
- Q. Of what? A. Behind the first floor where the trucks come in.
- Q. Do you remember when it was he gave it to you? A. All I know is the beginning of June.
- Q. What did he say to you then if you recall? A. He just handed me the card, and said start—trying to get to union together and would I sign it. So he gave me the card and he got me a pen and I signed it.
 - Q. Did you give it back to him? A. Yes, I did.

Mr. Appell: May we go off the record for—Your Honor?

Hearing Officer: Off the record. (Discussion off the record.)

C. Lynch, for General Counsel, Direct.

Hearing Officer: On the record.

Mr. Appell: Your Honor, at this time I offer General Counsel's 10 into evidence.

[452] Mr. Miller: What's the date of that?

Mr. Appell: June seventh, 1973, Your Honor.

Hearing Officer: Any objection?

Mr. Miller: No objection.

Hearing Officer: Hearing no objection, General Counsel 10 will be received.

(Document prespously marked General Counsel's Exhibit No. 10 received in evidence.)

- Q. Did there come a time, Mr. Lynch, when Mr. Harry Schob had a conversation with you? A. Yes, there was.
- Q. Do you remember when that was? A. Yes. That was sometime in, I believe it was on a Saturday. We were talking about John Cannon.
- Q. Do you remember the date? A. No. All I recall is what I read over that yellow piece of paper.
- Q. Do you remember what month it was? A. Yes, it was June.
- Q. Do you know if Murphy was still working there at the time? A. No, he wasn't.
- Q. And where did Schob speak to you? A. In the bailing room.
 - Q. The bailing room? [453] A. Yes.
- Q. Where is that? A. It's behind the basement there where we crush the boxes and we sort the carts that we use to put up the floors on.
 - Q. Was anyone else present? A. No, there wasn't.
- Q. What did Mr. Schob say to you and what did you say to him and what was done at this conversation? A. He said that someone had seen me talking to John Cannon on the elevator about the union, and he wanted me to follow him and we went back to the porters' locker room. And I wrote a letter—

C. Lynch, for General Counsel, Direct.

Hearing Officer: Wait a minute. He told you that someone had seen you talking with—

The Witness: To John Cannon on the elevator about the union.

Hearing Officer: Yes.

The Witness: And he asked me to come with him. And I told him. I went back to the porters' locker room. He got me a piece of paper and I wrote out what me and John Cannon were talking about.

Q. Why did you do that? A. At first I asked him, well, suppose I don't do it? He goes well—

[454] Hearing Officer: Excuse me.

Did Mr. Schob ask you to follow him and go out and write this paper?

The Witness: Right.

Hearing Officer: I see. And you said suppose you don't do it?

The Witness: Suppose I don't write out the form; He says you never know, it could be your job or his.

- Q. Schob said that? A. Yes.
- Q. What did you do then when he told you that? A. I followed him. We went back to the desk back there, and I wrote out what he wanted.
- Q. What did you write, as you best recall? A. I wrote that me and John Cannon were talking about the union and like we were talking about the union benefits, and how unions try to come in but the management has always stopped it.

At the bottom I put, I did do so of my own free will.

- Q. What made you write that? A. He asked me to put it there so I put it.
- Q. What happened then? A. He took the piece of paper and left. And I went back to work. And he came back to me

C. Lynch, for General Counsel, Direct.

again and said Mr. [455] Kaye didn't like the way it was done. So I had to follow him back to the desk again, because I spell Cannon with a G, I had to change it to a C, I had—we were talking about the elevator while we were working and Cannon at no time asked me to join the union.

- Q. Mr. Lynch, what made you write that this was while you were working? A He asked me to put it in so I decided to just put it in.
 - Q. Who asked you to put it in? A. Harry Schob.
- Q. And how about the change of spelling? A. He asked me to change the spelling, too.
- Q. How about that at no time did Cannon ask you to join a union? A. He asked me to put that in, too.
- Q. Now, when you put these things in, was it on a new sheet of paper or did you just add them to the old one? A. I had to do the whole thing over again.
- Q. Who asked you to do it over again? A. Harry asked me to do it over again.
- Q. And what did you do with that paper when you were through? A. He took both pieces of paper.
- Q. Now, did he indicate to you who had seen you talking [456] with Cannon? A. Yes. He told me Mr. Kaye had seen me talking to Cannon on the elevator.
- Q. When he said that it could be either way, your job or his, did he mean—whose job was the "his"? A. Either Cannon's job or mine.
- Q. Had you in fact spoken with Cannon before this? A. Yes.
- Q. When was that? A. That was on, I believe Tuesday or Wednesday night. He used to ride the elevator and I was talking to him about the union.

C. Lynch, for General Counsel, Direct.

[458] Q. Do you recall now whether Mr. Schob said anything else to you at any time that you haven't testified to? A. Yes. Talking about the union, he said the union has been trying to get into Mays for many years and has never succeeded.

Mr. Miller: Now, I want to raise an objection. I want to ask if that appears on the—if that comment appears on the sheet where the date of the affidavit appears. I want to know if that comment appears on that page.

Mr. Appell: Your Honor, it does not.

Hearing Officer: You will have an opportunity to cross examine.

Q. Is this the last statement that you just testified to, do you remember when it was that Mr. Schob made that statement? A. It was during the time when Red Murphy got me that card to sign.

Q. Was it the same date or a different date? A. It was a different date.

Hearing Officer: I don't understand. Did you mean to say that at the time when Mr. Schob was talking to you and asking you to write the statement when he made the statement—

The Witness: Yes, it was.

Mr. Appell: No further questions, Your Honor. Thank you.

Hearing Officer: Now, my notes indicate that at one point in time Mr. Schob talked to you about the union and requested that you write out a statement?

The Witness: Yes.

Hearing Officer: Concerning certain activities?

The Witness: Right.

C. Lynch, for General Counsel, Cross.

Hearing Officer: Now, the only question I have is, was that—did he make this statement about Mays' previous experience with unions at the time that he asked you to make this statement?

[460] The Witness: No. It was before.

Hearing Officer: It was before?

The Witness: Yes, it was.

Hearing Officer: How much before?

The Witness: It was right around the time where I filled out that card by Red Murphy.

Hearing Officer: I see. And how much later was it that he asked you to write out this statement?

The Witness: A couple of weeks later

Hearing Officer: A couple of weeks later. And when was it—one final question as long as I am on this—when was it that he made this statement that Mr. Kaye saw you talking with Mr. Cannon in the elevator?

The Witness: That was the day he made me write out the statement.

[461] CROSS EXAMINATION

- Q. (By Mr. Miller) Mr. Lynch, have you had any warnings or has anything happened to reduce your pay ever since this incident with Schob took place? A. No, I haven't.
- Q. Do you know whether anything happened to Cannon? A. Well, I heard that he had to quit, a couple of months ago, because of illness.
- Q. I see. Now, at one point you tried to tell Mr. Schob that you signed the union card; didn't you? A. Yes, I did.
- Q. And what did Mr. Schob say to you? A. He said I didn't hear that.
 - Q. Now, do I understand your testimony correctly that

C. Lynch, for General Counsel, Cross.

you say that Mr. Schob asked you to put down that Cannon did not talk to you about a union? A. No, he did not. He asked me to talk about the [462] union—he said that I asked to join the union.

- Q. He asked you to say that you were talking about the union? A. Yes, but that at any time Mr. Cannon did not ask me to join a union.
- Q. That Mr. Cannon did not? A. He did not; he just talked about it.
- Q. Well, I refer to your statement here, Mr. Lynch, particularly the bottom of page 3 where it says, Counsel can look with me, "Schob also told me I had to write in on the sheet that at no time did Cannon ask me to join the union." A. That's what I just said.
- Q. You mean that Schob told you to say that Cannon did not talk to you about a union?

Hearing Officer: You are making a distinction between talking to and joining, Mr. Miller; is that right? The Witness: Right.

- Q. The point I am getting at is Schob was the one who told you to do that, right? A. No. He said—he asked me did Cannon ask you to join the union. I said no, so he said put that down; so I did.
- Q. Now, do you know of any room or any department called the reaming department? [463] A. No, I don't.

[464] BERNARD MURPHY, a witness, called by and on behalf of the General Counsel, having been duly sworn, testified as follows:

Direct Examination

- Q. (By Mr. Appell) Give your address for the record, Mr. Murphy? A. 134 Church Street, Freeport, New York.
- Q. Mr. Murphy, are you also known as Red? A. Yes, I am.
- Q. Were you ever employed at Mays Department Store in Massapequa? A. Yes, sir, I was.
- Q. When did you begin working there? A. February, 1973 to June.
- Q. And what hours did you work? A. From six a.m. to four p.m.
 - Q. What days? A. Monday to Friday.
- Q. Did you work Saturdays, too? A. Saturdays, six to three.
- Q. How many days off a week aside from Sunday? A. One day.
- Q. What was your regular pay? A. A hundred and ten a week, I brought home I think [465] 99 days.
 - Q. What was your job at Mays? A. I was hired as a porter.
- Q. What did you do as a porter? A. Well, we sweep the floor, mopped the floor, picked up the trash, emptied it.
- Q. Was this always inside the building that you did your work or did you ever work outside? A. We carried the garbage out of the building in trucks and emptied into dumpsters.
- Q. What was your immediate supervisor? A. Harry Schob.

Mr. Appell: May I ask that the reporter mark this card as General Counsel's Exhibit 11, for identification.

(Above-referred to card marked Gen. Counsel's Ex. 11 for identification.)

Q. Mr. Murphy, I show you General Counsel's Exhibit 11 for identification.

Is that your signature on the bottom of the card?

(Card handed to Mr. Murphy.)

- A. Yes, sir.
- Q. Where it says name, who wrote that? A. I did.
- Q. Where it says social security number? A. I did.
- [466] Q. Where it says address? A. I did.
 - Q. Where it says home telephone number? A. I did.
 - Q. Where it gives the name of employer? A. I don't know.
 - Q. Was it you? A. No.
 - Q. How about where it says type of work? A. Porter, yes.
 - Q. Present wages, who wrote that in? A. I did.
 - Q. The date, did you put that date in? A. No, sir.
 - Q. Is that the date you signed the card? A. Yes, sir.
 - Q. Who gave you the card? A. Mike Brand.
- Q. And where were you when he gave you the card? A. I was on the first floor.
- Q. Do you remember what time it was about? A. About eight o'clock.
 - Q. In the morning or the evening? A. In the morning.
- Q. And do you remember what he said to you at the time? [467] A. He just handed me the card and asked me to sign it and give it back to him.
- Q. And did you sign it then or later? A. I signed it later on.
- Q. And what did you do with it after that? A. Then I gave it back to Mike Brand.

[468] Hearing Officer: * *

Hearing no objection General Counsel's 11 will be received.

(Card previously marked Gen. Counsel's Ex. 11 received in evidence.)

- Q. Mr. Murphy, did Mr. Brand give you any other cards such as the one you signed? A. He gave me a couple of more and he asked if I pass them around to the other porters.
 - Q. Did you do that? A. Yes, I did.
- Q. Was it the same day or later day or what? [469] A. I am pretty sure it was the same day.
 - Q. How many cards did you give out? A. Around five.
- Q. Did you speak to these people when you gave them out? A. Well, I handed them the card. I told them to fill it out and give it back to me or give it back to Mike Brand.
- Q. Did any of them return the cards to you signed? A. Chris Lynch did and about two or three other porters. The names offhand I don't remember.
- Q. Where did you give them the cards? A. In the porters locker room. Some on the platform, some in the porters locker room.
- Q. Did you give cards to anyone other than the porters? A. No. sir.
- Q. All right. Did there come a time when you were speaking with Mr. Brand after that? A. Oh, yes. It was one afternoon it was around three o'clock. I think it was June 12th, 13th.
- Q. Yes. A. It was around three o'clock. I was sweeping up around the dumpsters outside, which is part of my job, and Mike Brand came out.
- [470] Q. What did he say to you and what did you say to him? A. I approached him about these here new blowers that were going to be put up on the roof, and I asked him how we were going to do it.

He explained we were going to bring a crane in to put them up on the roof. After I was speaking to Mike Brand Mr. Z come walking down the platform.

And he looked at it, and I went back to work and Mike Brand walked away and as Mike Brand walked away, Mr. Z gave him a dirty look.

- Q. Do you know Mr. Z's full last name? A. Offhand, sir, no, I don't.
- Q. Who is Mr. Z? A. He is a floor manager, third in command, I think.

Mr. Appell: May we go off the record a moment, Your Honor?

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Appell: Your Honor, I propose a stipulation that the gentleman, Mr. Z, to whom the witness has referred is Mr. Zofskinsky, Z-o-f-s-k-i-n-s-k-y, and that he is a supervisor within the meaning of the act.

Mr. Miller: I agree to that.

Hearing Officer: Thank you. So stipulated.

- [471] Q. Now, did there come a time when Mr. Schob, Harry Schob had a conversation with you? A. Yes. It was the following morning.
- Q. Do you remember what day that was? A. It was on a Wednesday. I think it was June 13th.
- Q. What time was that? A. It was around ten o'clock, Mr. Schob got me and asked me would I walk back to the porter's locker room with him, which we did.

And when we got back there Mr. Schob told me that somebody had told him that I was seen talking with Mike Brand outside the platform.

And that he hoped that none of his men would get in any trouble by joining this union.

And I said to Mr. Schob, Harry, if I can make any more money by joining the union, I am going to join it. And then we proceeded to talk about what we were going to work on next and that was it.

- Q. By the way, do you recall Mr. Schob having any other conversations with you? A. Yes. Not the same day.
- Q. When was that? A. I think that was on a Wednesday morning.
- Q. Well, when did he have this other conversation with you? [472] A. I don't know what you mean?
- Q. Well, did he ever talk to you before, before that time, did you ever have any conversations with him in this locker room? A. Oh, yes. Every day. He told me what to do, I mean as far as the work is concerned.
- Q. Did he ever talk to you about anything else? A. Not that I recall.
- Q. Do you recall him ever mentioning the union before this date? A. No.
 - Q. All right.

Following date, Thursday June 14th, do you remember that day? A. Yes. June 14th I was off.

Q. What did you do that day? A. Around 12 o'clock I come over to the store to pick up my pay and I parked my car near the platform.

I walked up the platform, went in on the first floor, went down to the basement and I stood by the time clock.

And I waited for Mr. Schob to come around with the checks. He did around 12:30. And he gave me my check and I asked the supervisor, Mr. Harr, would he sign my check because supervisor had to sign it before you could take [473] it up to the second floor to the cashier's office and have it cashed.

Which I done. After I cashed my check I come back down

to the main floor, walked out the platform, got in my car and went home.

- Q. Now, which entrance did you go in when you came in? A. I came in the platform entrance.
 - Q. Had you ever done that before? A. No, sir; I didn't.
- Q. Had anyone ever told you any rule as to whether you could or could not use that entrance before? A. Nobody ever said anything to me about it.
- Q. Did you ever see it written down anywheres, any kind of rule like that? A. No.
- Q. Did you ever see anyone else use that door to go in or out? A. Yes. One afternoon there we were out emptying the garbage from the trucks into dumpsters, and I think his name is Tony, he's a carpenter, and he carried out this big long box and there was security guard with him and Mr. Z supervising—he was watching us empty the garbage trucks into the dumpsters.

And Tony proceeded to cut up this box for the security guard and put it in the trunk of his car. He [474] closed the trunk and off he went.

Q. Was this security guard on duty that day? A. He was off that day. But there was a security guard on the platform.

Mr. Miller: I presume this is going to be typed up onto something. I am waiting because I don't know whether to object now or not.

Mr. Appell: It will be.

Hearing Officer: I assume with you, Mr. Miller.

Mr. Miller: All right.

Hearing Officer: If not, I will entertain a motion to strike.

Mr. Appell: I join in that assumption, Your Honor.

Q. The following day, Friday, June 15th, did you go to

work? A. Yes. I come into work. I punched in around five minutes to six.

- Q. A.M. or P.M.? A. A.M.
- Q. What happened then? A. This captain McGuire; he is head of the security guards, he was standing there by the time clock, and he says to me, "Murf, there was a big hullabaloo about you coming into the platform entrance yesterday."

And I didn't see why. He says I had to reprimand [475] the guard that was on the platform at the time. I never gave it another thought.

- Q. Was there a guard on the platform when you had gone in that day? A. Yes.
- Q. He said anything to you at that time? A. Never said a word.
- Q. Then what happened on June 15th? A. So it was around 11:30, I was up in the cafeteria, and Mr. Z come up to see me, and called me to one side, and he said, "I understand you entered the store yesterday illegally, through an unauthorized area."

And I didn't actually know what he was talking about. He says, "If it happens again," he says, "I am going to have to write you up."

I says, "If you have to write me up, be my guest—what you want to do."

Then I went back and had my lunch. Around one o'clock I was down in the baling room, I get a phone call from Mr. Z to meet him up at the water fountain on the first floor.

So I go up, I had a sneaky idea what it was all about. So I had my badge and my identification card and I had my locker key in my hand and I says to him, "Is this what you want?" [476] He said to me, "Do you want to resign?" I says, "I do not want to resign."

So we got on the escalator. We went up to Mr. Kaye's office and—

Hearing Officer: Who is "he"?

The Witness: Mr. Kaye.

Hearing Officer: You said he wrote out.

The Witness: Z wrote out the story about me coming in the store illegally, and I signed it.

- Q. Did anyone ask you to sign it? A. Mr. Z asked me would I sign it. I says sure. So then I walked out of the office and went back to office.
- Q. What happened later that day? A. That afternoon I think it was around three o'clock, my boss Harry Schob met me in the baling room and asked me would I follow him.

He walked around to the receiving department in the back in the basement. Mr. Schob says to me, Murph, he says, they are out to get you.

I says what can I say?

Mr. Miller: I didn't hear him, who told him that?

A. Mr. Schob. He said they are out to get you. I says what can I tell you. Mr. Schob says I will tell you what I will do, I will say I caught you smoking on the floor illegally and he says I will write you up and that [477] will be it.

I says Harry, be my gues* So, that was it. We finished work and I punched out and want home.

- Q. Saturday the 16th did you work? A. No, sir, I called in sick.
- Q. Who did you speak to? A. I spoke to one of the security guards, I don't know who it was.
 - Q. Do you remember what time it was? A. Nine o'clock.
- Q. Do you remember what he said to you? A. He said he would relay the message to my superior.
- Q. Did you go in Monday, June 18th? A. I went in June 18th, yes. Regular time.
- Q. What happened? A. Well, Friday afternoon when I was speaking to Mr. Schob, I said, "What do I do tomorrow

morning?" He said, "Punch in the regular time." That would have been Saturday, but I didn't come in Saturday, I call in sick. I said, "what do I do tomorrow morning?"

He said, "Punch in the regular time." That would have been Saturday, but I didn't come in Saturday, I called in sick.

So I come in, I went to work Monday morning. I think it was around ten o'clock Mr. Schob told me to go in [478] the back of the receiving department and work in the receiving department, putting on labels on women's kimonos.

So we worked there about an hour. Around 11 o'clock Mr. Schob says, "Murph," he says, "Come on upstairs, Mr. Kaye wants to see you."

Oh, no, I am going ahead of my story, I am sorry. So around eight o'clock, Mr. Schob came over to me and said Murph, they want you to work outside today, which was out of the ordinary all together.

They had one special porter, this Jimmy Masson that done that every day. So I looked at Mr. Schob and I said to him, I said Harry, I am not going outside and do that today.

I said you can write me up on this. So he says is that all right with you? I says sure. So that's what he done.

Q. Now, up to that point, did Mr. Schob say anything—strike that.

Did you say anything else to Mr. Schob that you recall? A. I said to him, that's what he wants to write, go ahead, you know, be my guest.

- [479] Q. Mr. Murphy, what happened after Mr. Schob told you he would write you up for not going out? A. Weil, he walked away and I continued to mop the floor. And that was it. You know for the morning.
- Q. All right. A. Then around, around ten o'clock I think it was, Mr. Schob come over to me and told me that he want-

ed me and another porter, Jimmy, to go down to receiving. [480] We went down there and we start putting these labels on these kimonos.

We worked there about an hour and Mr. Schob come over and he says Murph, he says, come on up to Mr. Kaye's office, he wants to see you.

So we proceded up to Mr. Kaye's office. And Mr. Kaye read off the charges and asked me were they true and I said yes.

So he started explaining to me that there was part of the job, that I had to go outside and clean up if my superior told me to do it.

And I asked him why should I do it today when this Jimmy Masson done it every other day, and more or less the argument got to be a little out of hand there.

So to make a long story short, he says, "If it happens again," he says, "I am going to have to let you go."

I told him, "Be my guest." So I walked out of the office. Before I walked out of the office I said to Mr. Kaye, "Mr. Kaye, I always gave you a day's work for a day's pay."

And he said, "I have no comment about your work." So I proceeded to walk out of the office and went to lunch.

Q. Well, when you said that to Mr. Kaye did he say anything to you? [481] Anything to you? A. He made some kind of remark that he had no cause about my work, he had no complaint about my work. So I went to lunch.

When I come back from lunch Mr. Schob got ahold of me again. He says Mr. Kaye wants to see you in the office.

- Q. What time was that, about? A. Around one o'clock. Around 12 o'clock, I think it was.
- Q. Then what happened? A. So Mr. Kaye says well, I reconsidered your statement, he says and I think it would be best, he says that I let you go before there is an argument be-

tween you and Mr. Schob or Mr. Z and have a scene in the store.

So which was all right with me. Then Mr. Kaye asked me if I had any sick time coming to me and I told him no.

So then he got on the phone and got ahold of the cashier and she made up my time and my check, and I gave Mr. Palmer my badge and my locker key, which she gave me the deposit for.

The cashier came in with my check, I took my check, said good-bye to Mr. Kaye, shook his hand, Mr. Schob and Captain McGuire and I walked out to the time clock, and I [482] walked out the door.

- [483] Q. Mr. Murphy, did you ever get a handbook or a rule [484] book or a booklet from the company while you worked there? A. What?
- Q. Any kind of a handbook or rule book or any kind of a booklet from the company while you worked at Mays? A. No.
 - Q. What's the answer? A. No, sir, I didn't.
- Q. Did anyone ever inform you that there was a rule against soliciting on company time and during the work day in the store? A. It was never mentioned.
- Q. Are you familiar with the Mays Employees Association? A. Well, I heard of it, but I never had anything to do with it.
 - Q. Did anyone ever ask you to join it? A. Porter, no, sir.
- [485] Q. Mr. Murphy, did you give an affidavit to the National Labor Relations Board? A Yes, I did.
- Q. I show you this statement. Is this the statement you gave to the Board?

B. Murphy, for General Counsel, Cross.

(Document handed to witness.)

A. Yes, sir, it is.

- Q. On the bottom of page 8 is that your signature that swore this was the truth, to the best of your knowledge and belief? A. Yes, sir, I did.
- Q. You don't recall anything else that Mr. Schob ever said to you at this time? A. Not offhand I don't.
- Q. May I ask that you read to yourself starting six lines from the bottom of page 7, the four lines, read them to yourself and then I will ask you if that refreshes your recollection as to anything else Mr. Schob ever said to you. A. Well, it's about—
- Q. Does that refresh your recollection? Do you recall what else Mr. Schob said to you? [486] A. About the union tried to get in a couple of times there and they filed and he doubted very much if they ever would get in.
- Q. Do you remember when he said that to you? A. Gee, offhand, no. I don't.
- Q. Do you remember what month approximately? A. Well, that was in June.
- Q. Do you remember where he said that to you? A. In the locker room.
- Q. Was anyone else present? A. There might have been. I am not sure.

CROSS EXAMINATION:

Q. (By Mr. Miller) * * *

[487] Q. Now, before I forget, I just want to get this in, I believe you testified that you were the one who gave Chris Lynch a card and got the card back from him; is that so? A. As I recall, yes.

B. Murphy, for General Counsel, Cross.

[489] Q. The door was open. I see. Who did you say told you about this? Who did you say was the one who wrote you up on this entry into the receiving platform, who was the one who did that? A. Who wrote the ticket up?

Q. Yes. A. Mr. Z.

Mr. Miller: Would you mark—I have here an annexation—let you see the annexation, too, Mr. Appell, but nothing to do with what I want to do.

I detached Respondent's Exhibit Number 5, for identification, from this piece of paper which you can look at. I ask that it be marked.

(Above referred to document marked Respondent's Ex. 5 for identification.)

Q. I want to show you Respondent's Exhibit Number 5 for identification, Mr. Murphy and ask you if that's your signature on there?

(Document handed to witness.)

[490] A. That's my signature.

Q. And is that the write-up that we—that you were talking about? A. That's it.

Mr. Miller: I offer General—Respondent's Exhibit Number 5 in evidence, Your Honor.

Hearing Officer: Any objection?

Mr. Appell: No objection, Your Honor.

Hearing Officer: Hearing no objection, Respondent's 5 will be received.

(Document previously marked Respondent's Ex. 5 received in evidence.)

Hearing Officer: Is this the one you received in Mr. Kaye's office?

The Witness: For coming in the restricted area. Hearing Officer: You said this is your signature?

B. Murphy, for General Counsel, Cross.

The Witness: Yes.

Hearing Officer: Where did you sign it?

The Witness: In Mr. Kaye's office.

Hearing Officer: Thank you.

[491] Q. Now, you said that when you were walking to Mr. Brand, I believe it was in the parking lot, was it? A. Just outside the platform, yes, sir.

Q. Were you on duty then, by the way? A. Yes, sir, I was.

Q. Do you know whether Mr. Brand was on duty? A. I believe he was.

Q. How long did this conversation take? A. A couple of minutes.

Q. I believe you testified that Mr. Z gave Mr. Brand a dirty look? A. Yes.

Q. Would you describe that dirty look, please? A. Beg your pardon?

Q. What do you mean by a dirty look? A. It wasn't a friendly look.

Q. I imagine if it was dirty it wasn't friendly. A. He just gave him a glance as if to say what was he doing there.

[494] Q. Now did you report that fact to the union when Harry Schob told you you were on your way out? A. No, I didn't.

Q. Was Harry Schob your friend? A. Was he my friend?

Q. Yes. A. Well, we worked together. We got along together.

Q. He was warning about the fact you were on the line, didn't you consider that friendly?

Mr. Appell: Objection. Hearing Officer: Sustained. Excerpts of Stenographic Transcript of Hearing of January 7, 1974. S. Katz, for Respondent, Direct.

[497] Mr. Appell: At this time General Counsel rests, Your Honor.

Hearing Officer: Let the record show that the union representative that was here at the beginning of the hearing is not here so I assume that they rest, too. [498] Miss Gribbins, do you have any evidence on behalf of your case to present?

Miss Gribbins: No.

Hearing Officer: You rest?

Miss Gribbins: Yes.

Hearing Officer: All right.

[502] Excerpts of Stenographic Transcript of Hearing of January 7, 1974.

PROCEEDINGS.

Mr. Miller: Yes, sir, I'm ready. My first witness is Mr. Simon Katz.

Whereupon,

SIMON KATZ was called as a witness by and on behalf of the General Counsel, having first been duly sworn, was examined and testified as follows:

Judge Cohn: Have a seat, please.

DIRECT EXAMINATION:

Q. (By Mr. Miller) Mr. Katz, are you employed by J.W. Mays, Inc.? A. Yes, I am.

- Q. In what capacity? A. As vice-president in charge of store operations.
- Q. How long have you had that job? A. Approximately eleven years.
- Q. Have you been employed by Mays before that period? A. Yes. I was general manager for a period of five [503] years prior to that. And a store manager before that.
 - Q. I see.

Now, what are your duties, Mr. Katz? A. My duties involve going to the suburban stores, covering all stores. I'm there, once, twice a week, I make every store. I'm involved in the personnel within the store, in the cleahliness of the store, the stores' operation, its rules, its regulations in the actual running of the store.

Labor management within the store. As I said any personnel functions relative to scheduling and payrolls.

- Q. And who do the store managers report to? A. To me directly.
 - Q. Now, how many stores does Mays got? A. Seven.
 - Q. Is the Massapequa store one of them? A. Yes.
- Q. Is the Massapequa store one of the stores to which you've been referring? A. Yes.
- [505] Q. How many 38's do you have? A. We have six usually.
- Q. How many do you have—how many do you have now? A. At present we have five.
- Q. How many employees does J.W. Mays have? A. We have approximately 6,000.
- O. How many employees are employed at the Massapequa store? [506] A. Approximately 650.
- Q. And do you have—do you have—what is the turnover of the stores, the personnel turnover at that store, the

Massapequa store? A. The Massapequa store's turnover would be about 250 persons.

- Q. Would you explain that please? A. We run 650 employees on the average of a store. On end, this past year, for instance, we sent out close—well, we sent out 1,475 W-2 forms, which means that we have hired two and a half times the amount of people in the store. Two hundred and fifty persons.
- Q. Is that true for all stores or just Massapequa? A. No, that's true for all stores.
- Q. How many customers come into Massapequa on the average day? A. Between, that particular store, between eight to ten thousand.
- Q. How many days a week are you open? A. We're open six days a week.
- Q. All right. A. Excuse me Mr. Miller, that depends on weather. When I say eight to ten thousand—it depends upon the weather.
- Q. On an average day, would that be correct say? A. I would say eight thousand, yes.
- [507] Q. You want to reduce it to seven thousand? A. Seven, eight thousand it doesn't matter.
- Q. Now, how many people left the employ of Mays at Massapequa during the month of June 1973? A. Well, I took it upon myself to check the records in personnel and if I may, I have it written here so I can give you an accurate count. Seventy-three left Mays for various reasons in June of '73.
- Q. Did you count this from the personnel records? A. Yes, I did.
 - Q. How many in July? A. Fifty-two.
- Q. How many in August? A. One hundred and twenty-one in August.
- Q. Do you have anybody who was discharged in August?
 A Yes

Q. I want to finish my question.

How many were discharged in August and accused of thievery? A. Two definitely.

- Q. Name them? A. DeMattea and a chap named Spiegal.
- Q. Did you cause them to be arrested? A. No. We didn't arrest them, Mr. Miller.
- Q. Why not? [508] A. They made restitutions. They stole cameras, they made restitution. We're a suburban store, and we're in a small community. We do our best not to arrest where we are not forced to. That little town has two or three newspapers and they're more than happy to put all of this information in the newspaper and being a community store we prefer not to get that type of publicity where the store is full of thieves or pickpockets or what have you.
- Q. (By Mr. Miller) Now, does Mays have an employee discount policy? A. Yes, we do.
- Q. Explain it, please? A. An employee may purchase merchandise, pay for it in full at the register, she then takes it to a checking desk. At the checking desk she's either given a little slip made out right there or if she's late coming back [509] from lunch or supper she may take that slip home with her and fill it out at home.

Now, should she decide to keep the merchandise she fills the slips out at home and takes the ticket off the merchandise, and with that slip drops it at the box at the employees desk; there is a box at the entrance. That is then sent to Brooklyn, Brooklyn itemized it, breaks down their discount, and within two weeks or so they then have moneys in check, in their payroll check, and on the check there is a special box that says discounts. That's the entire operation.

Q. Do the employees of Mays use this? A. I would say 99,

99 one hundredths percent would use that. I wouldn't know why anyone wouldn't want to get money back.

Q. Answer my question. A. Sorry.

Judge Cohn: Before you leave that, would you tell us what the amount of the discount is?

The Witness: Ten percent.

Q. Ten percent off the ticket, by the way? A. Ten percent off the ticket price, yes.

I show you Respondent's Exhibit 4 for identification, and ask you if you recognize it?

> Mr. Miller: Let the record show that I have shown [510] the exhibit to the opposing counsel.

(Handing document to witness.)

I recognize it. Not only that, but I was instrumental in writing it up.

Q. All right.

Judge Cohn: What is it?

The Witness: This is our handbook that was given to all new employees telling them, it's a message by the president of the concern showing the founders picture and then it shows the officers within the concern so the-

Judge Cohn: You don't have to go page by page. What is it?

The Witness: It is a brief booklet stating what the employee can do, what they cannot do, how to check their coat, when they will be paid-

Judge Cohn: Rules and regulations?

The Witness: Rule and regulations, that's correct.

Mr. Miller: Okay. I offer that in evidence.

S. Katz, for Respondent, Voir Dire.

Mr. Appell: May I have some questions on Voir Dire, Your Honor?

Judge Cohn: Yes, sir.

VOIR DIRE EXAMINATION:

- Q. (By Mr. Appell) Mr. Katz, when was this booklet published? A. This booklet, perhaps twelve years ago.
- [511] Q. Wasn't there another booklet other than this that was originally issued? A. Yes. There was a plain booklet about, at that time. That was done by mimeographing and then we got into a fancy booklet like this which we sent out to the printers.
- Q. Which was this particular edition printed up? A. It's been that way for twelve years, ten years, twelve years. This is the booklet we've always had. All we've done is we made it fancier by having it printed on the outside. The original was made up by myself, and as we said we mimeographed and it didn't look good for our type of organization.
- Q. You're saying there was no change in the substance of this booklet from the original mimeographed edition? A. Not that I can recall.
- Mr. Miller, there may have been a change on the reprint on the front page of officers. That might have been changed. That about the only change on the reprint I can recall, might have been on officers.
- Q. Is the signature—there is a signature of Max L. Shulman, S-H-U-L-M-A-N, who is he? A. He's the Chairman of the Board.
- Q. Is he currently Chairman of the Board? A. He is. President and Chairman of the Board.
- Q. How long has he served in those capacities? [512] A. Well, he's been president for over twenty odd years and he's Chairman of the Board for the last eleven years that Mr. Weinstein has passed away. He's now both executive officers.

Mr. Appell: I have no objection.

Judge Cohn: All right.

Hearing no objection, Respondent's 4 will be received.

(The above referred to document marked Respondent's Exhibit No. 4 received in evidence, as of this date.)

Q. (By Mr. Miller) Now, do you give out this book to this very day? A. No, we do not.

Q. Well, when did you stop giving this book out? A. Sometime towards the end of September '72. We had a slight disagreement with the Labor Department relative to our vacation policy on the ten month policy. And at that particular time we stopped giving this out until we could get this matter settled with the Labor Department.

In fact, we're in the midst of litigation with them now relative to that paragraph on vacations.

[516] Q. Now, did you have anything to do with the letting go of Mr. Michael Brandt? A. Yes, I did.

Q. What did you have to do with it? A. I fired him.

[524] Q. Who took care of Miss Gribbins' transportation to Levittown? A. Well, there were points there Mr. Hord took her over, a great number of people took her over. Mr. Igloi took her, that was display manager in the Levittown store. He picked her up. I understand that another person in display—

Q. I just want to know what you know. A. Oh, I see.

Q. Mr. Igloi you know? A. Yes, Mr. Igloi.

Q. Where is Mr. Iglor now, by the way? A. He is retired.

Q. He's no longer with Mays? A. No, he's no longer with Mays.

[549] O. * * *

Are employees allowed to carry handbags or pocketbooks on the selling floors? A. No, they are not.

Q. What is the rule? A. When an employee is hired they are given a plastic bag, a see through plastic bag with a zipper on this and they are told at that particular time that they are not to utilize or not to take their handbags on the floor anytime, their coats, hats or handbags.

Those are to be left in the locker or checked downstairs. We have a checking desk. They are to utilize a small plastic bag and that is done for security reasons.

Q. Where do they put their handbags? A. They have a locker or a checking desk.

Q. Supposing they take the bag from the locker and they want to leave the building, what's to stop them from stuffing merchandise in the bag at that time? [550] A. Well, simply because it's arranged so that between the locker and leaving the building, the only thing that's in the way are some heavy bicycles or exercise machines or bar bells, I can't visualize that going into a pocketbook.

Q. What about check room and the exit? A. And they must pass the check room which is always manned by a guard. Make a left in front of the guard and go up the stairway.

Q. Is there any merchandise between the check room and the exit? A. The only merchandise there is as I said, bicycles, sporting goods, heavy stuff, bar bells.

Q. What about the receiving platform, do you have any rules concerning entry there? A. Yes. We have rules on that, Mr. Miller. We insist that no one utilize that platform for incoming or for exiting with the exception of porters who will take garbage out through that platform door, but only when they are accompanied by a guard.

Q. What do they do then? A. They will take garbage out of the trucks and put it into dumpsters, which are outside.

The guard accompanies them, and the guard generally walks them back.

Q. When they got the thing in the dumpsters, is there [551] usually some debris there to sweep up? A. He may leave one there to sweep or there is also a guard on the receiving platform who remains there all day. That is a stationary post. One man may walk away them out down the ramp to the dumpsters because unfortunately we've put untolds amount of merchandise in the dumpsters where porters have come back at night, opened it and removed dresses, coats and such.

So since this particular time, which is about two years ago or so, no one can go out of that entrance with the exception again of perhaps one or two maintenance men because their equipment is in that area.

- Q. Now, what else do you have on that platform in the way of security? A. We have—
- Q. For security purposes? A. We have an iron door, that separates the platform from the store. Anyone going through that door there's a clamper that starts ringing so that the guard turns and looks at that door. There is nothing between the guards view and that door.

It's in the hallway. That door has a sign on it, any unauthorized personnel will be summarily dismissed.

Q. Somewhere around September of '72, you started to issue Employer's Exhibit 4. How do employees learn about [552] some of the rulings in that? A. We have personnel employees orienting them, orienting the new employees as to the rules and regulations within the store, telling them about checking their hats, if they're ill to call in when they're out, all the various regulations that are required to, for a new employee to know.

Mr. Appell: I move to strike as hearsay.

Judge Cohn: Well, I'll let the answer stand. These are instructions that you give to the personnel?

The Witness: Yes, sir,

Judge Cohn: Obviously you don't know whether or not personnel actually give them to the employees, vou're not present?

The Witness: Well, I know they do it in my Brooklyn store, my presence there. No, I'm not present at the individual personnel offices.

Judge Cohn: I'll let the answer stand as to instructions you give to the store personnel people to pass on to the employees.

The Witness:

Mr. Miller: We're going to have the personnel person at Massapequa here as a witness at sometime.

- (By Mr. Miller) Who does this orienting? A. The personnel director may do it or her assistant. [553] When they reach the floor they are also told a number of these things by their individual section managers who now has to tell them their lunch hour, their schedule, show them their lockerroom, she may give them a woman whom we may call a sponser, whom this young lady who stay with for the day so she would learn what her job within the department, with the merchandise is within the department, and how to show a customer merchandise, where to find it, and make her feel at home so that they'd want to become a regular employee in the store.
- Q. Are these transparent see through plastic bags that you give, are they given only to female employees? A. Yes, they are.
- [555] Q. Can you tell us the circumstances under which you dismissed Mr. Brandt so far as you know them? A. Well, I received a report from Mr. Kay that Mr. Brandt had been

soliciting personnel on the selling floors on store's time and on his working time. I came to the store. I called Mr. Brandt. I called Mr. DeRonde, his supervisor, and in Mr. Kay's office with Mr. Kay present I told Mr. Brandt two things, and the reason I recall them so vividly is because I spoke to you, Mr. Miller, and I made notes as to what to say to Mr. Brandt because I was very careful as to what I would say to the individual so we would have no problems later.

Q. Let me interrupt. Did Mr. Brandt testify at a previous hearing? A. Yes, he did.

Q. Continue. A. I told Mr. Brandt that he had no right to solicit on the selling floor or store's time, on the—when he was suppose to be working on his time. That work time was for work and he was getting paid to do that, that if he wanted [556] to solicit, he would solicit in the lunchroom, he could solicit in the lockerroom, he could solicit out in the parking lot for all I care, but he could not stop from working on the selling floor and go about this type of business.

And should this thing happen again I was giving him a warning and if this happened again, that I would dismiss him.

Judge Cohn: You said you told him two things?
The Witness: I told him as Mr. Miller had laid out,
I had a yellow sheet in front of me, sir, and I read from
that yellow sheet. I told him he had no business
soliciting and the second part of that, sir, was the fact I
told him where he could solicit.

Judge Cohn: I don't quite understand. You said he had no business solicit?

The Witness: He had no right to solicit on the selling floor during business hours or stop people from working on the selling floor.

Judge Cohn: And then-

The Witness: On his working time.

Judge Cohn: Yes. Was that number one?

The Witness: That was number one. Judge Cohn: What's number two?

The Witness: And number two I told him you can [557] solicit in the lunchroom, in the locker room or in the parking lot.

Judge Cohn: All right.

The Witness: When people are on their own time, not on their working time.

Judge Cohn: Then you say you warned him?

The Witness: Then I said I'm putting this in your folder as a warning, and that was—and I'm—"I'm giving you a warning at this time, but next time you will be dismissed".

Judge Cohn: Then what happened?

The Witness: He said, "Who me?" With a smirk as though he didn't know he had been doing this. And I told Mr. DeRonde, "Let him go back to work, Paul."

Judge Cohn: Just tell us all what happened as far as you know.

The Witness: That was the end. He went back to work, and that was the end of that particular incident. I wrote the report down, and I put it into his folder exactly what I had told him.

Q. (By Mr. Miller) When was the next time you talked to Mr. Brandt? A. Next time was a week later, June 13. At that particular time I had been notified on the 12, the evening, that Mr. Brandt had again been soliciting in the store on [558] company time on the selling floor and stopping people from working. I came out on the 13, the following day, and I read a statement that I had received from Mr. Kay relative to this.

I called Mr. Brandt to my office—to Mr. Kay's office and I called Mr. DeRonde again as a witness, Mr. Kay, myself, Mr.

Brandt were there, and I told Mr. Brandt that you have chosen to ignore—I'm sorry, I also called you Mr. Miller, and again you told me what to do and how to do it.

And again I made notes for myself so I would have no problems. I told Mr. Brandt you have chosen to ignore my warning, insofar as not soliciting union activity on the selling floor, and preventing people from doing their work, that they are being paid for.

Their work time is for work, and you have continued to solicit. Mr. Brandt again repeated, who, me, I didn't do that. And I said, Brandt, I don't believe you, you have solicited, and I'm terminating you herewith.

Q. Then what happened? A. Well, he got up, made quite a fuss, he wants his pay—"I want my pay now" and "I refuse to leave the store", so on, and so on. Actually I didn't have to give him his pay then—

Judge Cohn: Just tell us what you did.

[559] Q. Did you give him his pay? A. I gave him his pay.

Q. Okay. A. I had his pay made up and gave him his pay.

Q. Who is Mr. Zayle? A. Mr. Kay's assistant.

Q. Was Mr. Zayle present at this termination? A. Yes. Mr. Zayle was present at the termination, that's correct. Mr. Zayle, Mr. DeRonde, Mr. Brandt and myself.

Q. The four of you? A. Just the four of us. Mr. Kay was off that day. That was his day off.

Q. This-

Judge Cohn: Off the record.

(Discussion off the record.)

Judge Cohn: On the record.

Mr. Miller: No, sir, I have finished my questioning of the witness.

Judge Cohn: All right.

[560] CROSS EXAMINATION:

Q. (By Mr. Appell) Mr. Katz, how many years have you been working for Mays? A. Going on 21.

[562] Q. By the way, this isn't the first time this past year that unions ever tried to organize Mays, is it? A. No.

Q. There've been other organizing attempts in the past, isn't that correct? A. Yes.

Q. And isn't it a fact that the company has always opposed the unionization of its employees?

Mr. Miller: Objection.

Judge Cohn: I think he can state the policy of the store. Overruled.

A. Well, I don't imagine any place likes to be unionized, but what we oppose is the matter in which some of the unions—the attempts that were being made.

Q. Has Mays ever been found guilty of unfair labor practices before the Labor Board?

Mr. Miller: Objection.

Judge Cohn: That's a legal conclusion. You can cite any previous cases. I'll take judicial notice of it. Sustained.

Mr. Appell: Very well.

- Q. When did you first learn of the organizing drive of [563] Local 30, and Local 307? A. When we received the notice from the N.L.R.B. stating that Local 30 had filed cards.
- Q. Do you remember when that was? A. Sometime in March, I believe.
- Q. How did you find out about it, who brought it to your attention? A. Mr. Kay.

Q. What did he tell you at that time? A. He told me he had received a petition or some such paper from the N.L.R.B.

Q. Did you tell him to keep in touch with you on what he heard about the union? A. Yes, of course.

Q. And did you also instruct him to tell his subordinates to report to him on what they heard? A. No. In fact I had told him at that time that we'd contact Mr. Miller. And go on his advice.

Q. Did you put out any kind of letters or literature to the people explaining that Mays opposed the union after you found out about this? A. Definitely not.

[566] Q. (By Mr. Appell) Did Mr. Kay ever report to you after your initial conversation with him about the petitions being filed, did he ever report to you about any of the union activity or developments after that? A. Well, he kept in touch with me, any changes that might come in or any paper work that might come in. Yes. He notified me on any of that.

[570] Q. The employee discount policy you testify to, where is the office where the employee must go to get the discount cleared? A. That's in Brooklyn, but they don't go to Brooklyn. All they do is drop their discount in the box at the employees entrance and from there on they have nothing to do with it. The next thing they know their money is in their paycheck.

Q. The employee handbook that is in evidence as Respondent's Exhibit Number 4, did you ever personally distribute that to employees? A. Yes, I've given it to employees.

Q. When? In which— A. Very very often.

- Q. In Massapequa? [571] A. Not in Massapequa. In my Brooklyn store. I've also hired.
- [573] Q. Which departments are slow in June? A. Your head goods departments are slow in June, your coat department goes subsequently to sleep in June, outer wear, any outer wear departments.
 - Q. How does that effect maintenance? A. Pardon me?
- Q. How does that effect the maintenance department? A. By the middle of June we are setup with anything that we could possibly do to make the store, beautiful for our customers and such. As far as maintenance, as far as display or carpenter, any of that type of people, they are finished insofar as their work is concerned within the store.

We generally start their vacations about that period of time, June, early July and such. The next phase is when we do need them starts at the end of July going into August when we start our back to school session.

Q. Isn't it a fact that a number of maintenance employees [574] are even more busy in June and July in order to keep care of the nursery and gardens that Mays has, garden center? A. They have nothing to do with the garden center. The garden center has its own people. It's a department in its own right. Maintenance helpers may be sent there to repair a hose that might break, anything that might break or need repair out there. Maintenance housekeepers may be sent there to help clean up the area, sweep the debris from around the fences, any of that type of thing.

But they don't belong to that department and there's it is not necessary of them at that department. They also can help unload occasionally when merchandise come in from the trucks, humus, H-U-M-U-S, and so forth, pedals for garden, that type of thing. But they come and go.

- Q. How about work on the air conditioning system, isn't there a lot of that to be done in June and July and May? A. Is there anything to be done on air conditioning system in June and July, I pity them frankly, because the air conditioning units should be cleaned out and ready to go in April and generally they work on the air conditioning system in January and February and March when the store is—when we don't have it on.
- Q. How about breakdowns in the system,— A. Breakdowns yes. Breakdowns is a great factor. In fact in our Massapequa store our maintenance helpers were [575] so wonderful there and I say that, well, how shall I say it, I'm saying it in a—looking down it, our units broke down completely, completely. We had to have outside maintenance come in and repair those units for thousands of dollars and yet we kept a force of six maintenance men who were suppose to know how to maintain them.
- [580] Q. Has Mays ever had such employees brought to prosecution? A. Oh, yes, we have. Dependent on how severe and how [581] much they've taken. We try not to because we're a neighborhood store. But occasionly it serves a good purpose.
- [582] Q. Who has the authority to have an employee shifted from one store to another? A. In this case, Mr. Hord would have the authority. He's responsible for four suburban stores, four display departments in four of our suburban stores, and he can [583] move his people around wherever he needs people, so long as it didn't effect the work in the individual store.

- Q. As a matter of fact her supervisors thought very highly of her, isn't that correct? [584] A. There's nothing wrong with Laura in many places. Laura is a very excellent displayer. She received increases because of that.
- Q. Prior to the decision to discharge Laura Gribbins did you personally inquire of her what the circumstances were in this matter? A. No, I did not. I never spoke to Laura at that time.

Judge Cohn: Who made the decision to discharge; Mr. Kay?

The Witness: Mr. Kay.

- Q. Well, isn't it a fact that you told Mr. Kay that he hadn't been severe enough— A. Yes, I told him that when he called me at home.
- Q. Didn't you instruct him to fire him? A. I bawled Mr. Kay out for not having terminated Laura Gribbins when he found the green body suit in her pocketbook and hadn't received a satisfactory explanation for that.
- Q. So it was your decision to fire Miss Gribbins; isn't that correct? A. No, it was not my decision. I told Mr. Kay to contact Mr. Miller and get his final decision on that because I thought that one day we might have trouble relative to Laura if we did fire her, knowing that the union is looking for all of these little tidbits to create problems.
- [585] Q. How did you know that the union was looking to create problems or why did you believe that? A. I seen it, I heard it before and I seen the different things that came up and I heard at the other hearings that I was involved in back in March, so through Mr. Miller's advice I was extra careful in anything I had to do with any one that we knew was not union or anything to do with the union.
- Q. How did this have to do with the union, Laura Gribbins' discharge? A. It had nothing to do with the union.

Q. Why did you contact Mr. Miller? A. Because we were afraid that the union might twist it around as they seem to have done, so we contacted Mr. Miller to make sure that we knew just what we were doing and that we dismissed it in the proper way. We dismissed her for nothing to do with the union, but because of an infraction of company rules, and unsatisfactory explanation.

Q. Now, who actually spoke to Mr. Miller before Miss Gribbins was discharged? A. Mr. Kay.

Q. You didn't speak to Mr. Miller at that time? A. I did not speak to Mr. Miller. That happened in the evening. Mr. Kay, I understood now, called Mr. Miller the following morning.

[586] Q. How did you learn that? A. From Mr. Kay.

[587] Q. Let's go to Mr. Brandt. Who gave you information that he was soliciting for the union? A. Mr. Kay.

Q. When did he tell you that? A. On June 7th.

Q. Were you personally—were you speaking with Kay personally or by phone? A. No, I spoke to Kay personally.

Q. What did he say to you, what did you say to him? A. He showed me a statement that he had in which it showed that Mr. Brandt had spoken to two or three people soliciting them for the union on the selling floor.

[588] Q. Who's statement was that? A. That was Mr. Schob's statement.

Q. Harry Schob? A. Yes.

Q. Do you have that statement here? A. I don't have it with me.

Mr. Appell: Can I call upon counsel for Respondent to furnish that statement?

Mr. Miller: Can I have one minute, please off the record.

Judge Cohn: Off the record. (Discussion off the record.)
Judge Cohn: On the record.

Mr. Miller: I have the statement here of June 7th, which the General—Counsel for the General Counsel is asking me to produce. I produce it and now request that he place it in evidence as his exhibit. And that he be accordingly bound by the contents of his exhibit.

Judge Coha: Well, you're presenting—let the record show that you are presenting counsel with some—something that purports to be a writing. I don't think that counsel is required to place that in evidence.

If you want to proffer it in evidence as part of your case, then—

Mr. Miller: I beg your pardon, he has no right to [589] make his investigation in the course of this hearing.

Judge Cohn: I'm merely stating for evidentiary purposes I don't require any counsel to offer anything as part of their case. If they want to or don't want to, that's their prerogative and I would take whatever they do or don't do in consideration in the case.

But I don't consider that the fact that you proffered something that counsel requested, that you're entitled to make a condition that he introduce it as evidence in his case.

Mr. Miller: May I then say, are you ordering me to give him that document?

Judge Cohn: Well, if you have the document, and the witness referred to it and counsel requested it then if you said yes, I have it, but I'm not going to proffer it, then I would not require you to proffer it, I would take that circumstance into consideration with all the

other evidence in the record as bearing on the issues in the case, that's all I can say at this point, Mr. Miller.

Mr. Miller: Well-

Judge Cohn: I think it's a relevant piece of evidence or at least it's relevant to the interrogation of this witness. Whether or not it's relevant I don't know. It hasn't be proffered.

Mr. Miller: The point that I was-

[590] Judge Cohn: Just as you called upon counsel for production of some affidavit, as I recall, during the course of his case when it became a question concerning the facts of, I don't even remember who the witness was, it became a document that was important.

Mr. Miller: No, sir. May I point out there's a slight difference there. I had asked, as was my right for Jencks Act Rule. That's what I asked for and I didn't even ask it for all of them.

Maybe I should have, but I didn't. But the point is that I have a slight right to demand that under the cases as I understand the law What's happening now is he finds out that there may be a document, now he wants to go ahead and look through the thing and then forget about it doesn't suit him and I don't believe I'm required to assist him in his investigation.

Judge Cohn: All I'm ruling if you have the document—I did not order that you disclose it. I merely said that's a fact that I will take into consideration. And I would not require that as a condition of your proffering it to him, that he introduce it into evidence in his case.

And you can make your own decision on that. I recognize the distinction that you pointed out between a Jencks Act Affidavit and another kind of affidavit.

And I agree with you. But I'll still make the ruling that I made. [591] You can act accordingly.

Mr. Miller: Well, now, all right. I hand the document to Mr. Appell, and challenge him to put it into evidence as his exhibit.

Judge Cohn: Let the record show that you handed a document to Mr. Appell.

We'll take a five minute recess.

(Recess taken.)

Judge Cohn: On the record.

- Q. (By Mr. Appell) Now, Mr. Katz, did Mr. Kay tell you how Mr. Schob found out about Mr. Brandt soliciting for the union? A. Yes.
- Q. What did he tell you? A. He told me that Mr. Schob had himself been approached.
 - Q. And-

Mr. Miller: Excuse me, I'm afraid that I am required, with respect to interrupt, to note for the record that I have received a statement back from Mr. Appell.

Does Mr. Appell propose to use this in any way? Judge Cohn: Let the record show that you received the statement back.

Mr. Miller: Thank you.

Judge Cohn: Let the record speak for itself.

Proceed, please.

[592] Q. (By Mr. Appell) Mr. Katz, Mr. Schob indicated on his written statement, did he not, that Mr. Brandt approached Mr. Murphy about the union? A. Yes.

Q. Do you know how Mr. Schob knew this? A. According to Mr. Schob's statement he spoke to Mr. Murphy. Wondered

why he had stopped working or some such thing and talking to Brandt.

- Q. Who, to your knowledge, requested Mr. Schob to write up a written statement? A. I would imagine Mr. Kay.
- Q. And after Mr. Kay showed you this written statement, what did you say? A. After he showed me the written statement, I called Mr. Miller, to tell him exactly what had transpired, and what we had.
- Q. And what did he say? A. Mr. Miller said to get the statement down exactly the way it happened, and Mr.—then I repeated it to Mr. Kay.
- Q. What did you say to Mr. Kay after you talked to Mr. Miller? A. Nothing. I simply repeated Mr. Miller's words, that he was more or less satisfied with the statement that Mr. Kay had gotten from Mr. Schob, that's all. It was just [593] a matter of repeating it so we got a clearance on whether the wording was right in it because we wanted nothing wrong with it, we wanted the full truth in the statement.
- Q. What was the purpose of having the statement? A. To show that Mr. Brandt had been soliciting on the selling floor, that he had stopped the people from working.
- Q. And the statement explains, does it not, that Mr. Brandt was asking employees to sign for the union? A. I guess, yes.
 - Q. Well, what happened then?

Was Mr. Brandt called in then or— A. Yes. I called Mr. Brandt in.

- Q. What did you say to him at that time? A. Prior to my calling Mr. Brandt, I had spoken to our attorney, and Mr. Miller gave me the wording to speak to Mr. Brandt about—
- Q. I'm asking you what you said to Mr. Brandt? A. I spoke to Mr. Brandt and I told him two things. I said to Mr. Brandt, that he had no right to solicit our people on the

selling floor during working time. That he had no right to be soliciting because he should have been working.

That if he were going to do any of this, he had a right to do it in the lunchroom, in the locker room, parking lot. He had no right to stop any one from doing [594] their work on the floor.

- Q. And then you warned him, did you not, that if he did it again he would be fired? A. That's correct.
- Q. Now, what happened after that with regard to Mr. Brandt? A. After that, a week went by and on the 12 I received a call from Mr. Kay that Mr. Brandt had again solicited personnel on the selling floor.
- Q. How did he tell you he knew that? A. He—someone had come forward and given him a statement to that effect.
 - Q. Who is that? A. A matron.
 - Q. What was her name? A. Mrs. Strayhorn.
 - Q. S-T-R— A. S-T-R-A-Y-H-O-R-N.
- Q. Is she a supervisor with the company? A. She's in charge of four or five matrons.
 - Q. What's her first name? A. Florence.
- Q. Did she assign them their work, the other matrons? A.
 Well, they have a set routine. Yes, she assigns their work.
 [595] Q. Does she decide who will work at which place?
 A. Yes.
- Q. And do you know how Mrs. Strayhorn found out about Mr. Brandt talking to someone? A. It was she whom Mr. Brandt was discussing—was talking to.
- Q. Did Mrs. Strayhorn write out a written statement? A. Yes, she did.
- Q. What did it say in it? A. To the effect that Brandt did approach her on the floor and had discussed the union with her, whether she would care to sign up and join the union, and the fact that the union would give her this benefit or that benefit, some such thing.

- Q. Had you ever spoken to Mrs. Strayhorn about the union before this incident? A. No, I never did.
- Q. Is she in charge of the elevator operators too? A. Yes, she is.
- Q. Who is Mrs. Mitchell? A. Mrs. Mitchell is an elevator operator, another woman, matron.
- Q. She's under the supervision of Strayhorn; is that correct? A. Yes.
- [596] Q. Now, this discussion between Brandt and Strayhorn occurred on June 12 supposedly; is that correct? A. That's correct.
- Q. You learned about it what day? A. June 12 in the evening.
- Q. Did you ever ask Mr. Brandt if this were true? A. On June 13.
- Q. What did you say to him? A. I told him that I had had a report that he continued disregarding my advise as to where to solicit, that he had continued to solicit upon company time and keep the employees from working, and that I was terminating him.
 - Q. Well, did you ask him if this was true though?

Did you ask him for his version of the facts? A. Mr. Brandt gave his own version of the facts, but stating he knew nothing about it, "Who me".

- Q. I ask you again did you ever ask Mr. Brandt to give his version of the facts?
 - Mr. Miller: Objection. The question has been answered already.
 - Judge Cohn: I don't really think he has. Overruled.
- Q. Did you ever ask Mr. Brandt to give his version of the facts in this matter? A. It wasn't necessary to ask him because Mr. Brandt immediately said, "Who me".

[597] Q. Are you aware of the existence of a Mays employees association? A. Yes.

Q. Did you ever fire any one for soliciting for the Mays employees association? A. It was not an organization which they solicited. That was a charitable organization, employees organization within the store.

Mr. Appell: I move to strike as not responsive, Your Honor.

Judge Cohn: Well, I'll let it stand as his answer. You can further interrogate him.

Q. Did you ever fire any one for talking about the Mays employees association or signing any one up for an outing during working hours? A. This was generally done in the morning before working hours, in our lunchroom. Or even on lunch hour.

Judge Cohn: I gather from your answer to counsel's question is no, that you did not ever discharge any one for activities on behalf—

The Witness: No, sir. No.

- Q. Did you have an United Fund drive at Mays Department Stores? A. Yes.
- Q. Didn't you have meetings with employees at that time? [598] A. There was one meeting with the United Fund drive, with charity for Long Island.
- Q. Was such a meeting held at Massapequa? A. Such a meeting was held at Massapequa at 9:00 o'clock in the morning before the store opened.
- Q. Employees are working already though, aren't they? A. The employees that come to that particular meeting generally have not punched in as yet. They may, depending upon the store manager, whether he's lax or not, have employees there who are suppose to be working and out on the

floor. That meeting is usually held for employees who have not punched in and not working.

At 9:00 o'clock there's very few employees in the store that are starting to work because we open at 10:00. There's no sales help of that type around. A few maintenance men, porters as such.

Q. The meeting is called for all employees; isn't it? A. As an invitation for whomever wished to attend. That's how that is done. It's an invitation to them to attend this meeting sponsored by the United Fund.

[600] RE-DIRECT EXAMINATION:

[601] Q. (By Mr. Miller) What did I instruct you to do at Mays? A. You told me to speak to Mr. Kay, to alert him to be careful, especially after the meeting we had, not to look for any problems with the individuals, to lean over backwards, you told—you definitely said don't get—there's no surveillance, you're not to threaten, you're not to do anything with these people, just leave them alone.

Q. Does that exhaust your recollection of what I said to you? A. Also that they would be looking to create various problems within the store, they would try to make incidents out of the least little thing, if you look at them sideways, they may bring a charge, be careful in whatever you do.

Q. Did I ask you to collect data? A. Yes. You did, sir.

Q. Now, how many United Funds campaigns have you had in the last year? A. Just this one.

Q. How long did this last? A. Half hour, twenty minutes.

Q. Do you personally know if there is any M.E.A. solicitation during working hours on the selling floor by the employees? A. No, I don't personally know that.

[602] Q. Do you know of any rule in Massapequa which says an employee is allowed to stop work and do private solicitations? A. By no means.

Q. Who is the one who told you that Mr. Brandt solicited, among other, Mr. Schob?

Who told you that? A. Mr. Kay.

Q. Is Mr. Kay in the room now? A. Yes, he is.

Q. Who told you that Mr. Brandt solicited Mrs. Strayhorn? A. Mr. Kay.

Q. That's the same Mr. Kay? A. Same Mr. Kay.

Q. Did you cause Mr. Brandt to be placed under surveillance at any time? A. No, I did not.

Q. Did you tell Mr. DeRonde that you had a hate for Mr. Brandt? A. I did not. I didn't know the individual.

Q. Did you tell Mr. DeRonde that you had a hate for the union? A. I did not. My wife is a union member.

Q. What union is your wife a member?

Mr. Appell: Objection.

[603] Mr. Miller: I would like to specify, if Your Honor please.

Judge Cohn: Overruled.

Q. Name the union, please? A. Federation of Teachers.

Q. Did you cause or did you yourself order that threats or promises be made to Mr. Brandt? A. No, sir.

Q. Did you cause any one to withhold promotions from Mr. Brandt? A. No, sir.

Q. If you were asked the same questions about Mr. Murphy, what would your answers be? A. I didn't know Mr. Murphy, I couldn't withhold anything from Mr. Murphy.

Q. I may have asked you some of these questions before, but in the interest of making a full record I hope you will bear with me, if I ask you about Fazio and Dashefsky and Miss Gribbins what would your answers be? A. Miss Gribbins was

the only one that I know or have spoken to in the store that I would have had any involvement within the store since she was in the display department.

Q. I'm talking about threats, surveillance-

Judge Cohn: You did ask the questions with respect to Mr. Fazio and Dashefsky.
[604] Mr. Miller: If I asked the question, I apologize for being repetitive.

[606] Q. Would you estimate for us, please, the amount of time you spend in your office and the amount of time you spend going around to the stores? A. I would say I'm in the stores about 90 percent of my time. For the simple reason that I'm in Brooklyn 7:30 in the morning. I do my paper work, my mail comes down the night before and I'm out of the store. I'm in Brooklyn every morning 7:30, quarter after seven, depending on the traffic on the West Side Highway.

Q. And when you are in the store do you have any set routine as to what you do? A. Yes.

Q. What do you do? A. I would get—prior to going into some of the stores I take myself around the outside of the stores, to look for cleanliness, windows, that type of thing. I will then go in the store. There are times I go in the store, I will get the manager immediately.

There are other times in my pattern where I will walk through the store without their knowing I'm in the store so I could see these various things that are wrong with the store. When I go through with the manager we'll check the various department, we'll look at displays, layouts, the way the merchandise is, if it's sized, if it's [607] colored properly, the cleanliness of the store, the amount of personnel in the various departments, the way the personnel looks, the manner in which they deport themselves.

We can stand on the side—the handling of the customer, are enough registers open to handle the customers, that type of thing.

- Q. How many people would you estimate you talk to in the store? A. I could talk to ten, I could talk to twenty, I could talk to fifty.
- [608] Q. How do charities such as this United Fund thing you've testified about, how does a charity go about getting or trying to get some money from the employee, what happens? A. Very simply, Mr. Miller, all charities come across my desk. I'm the one who okayed the United Fund to have this morning drive in the Massapequa store. A ought it was worth whiled. We have heart fund, we have every illness conceivable, Palsy, we have collections outside of my store where I give them special days so we can collect.
- [609] We're a community store, and we must work with the different charities, and I okay and select the charity and give them the date they can stay outside our doors and put canisters up.
- Q. I'm talking about inside the door, the procedure to get in there requires your approval? A. That's right.
- Q. You have to approve the inside and the outside? A. Yes, sir.
- Q. Did you approve any other charitable thing during 1973? A. Yes. There was one other that was approved, I think. I don't recall. It had to do with heart or—I don't recall—it was something to do with medical. I don't remember whether it was for the Heart Fund or some such thing, but I think they came in and they showed a movie and that was it.
 - Q. Where was that done? A. In the cafeteria.

[610] By Judge Cohn:

[611] Q. When Mr. Kay reported that Mr. Brandt was soliciting in the store on company time, on his time, that is what he reported to you? A. Yes.

Q. Did he report that he was soliciting for the union? A. Yes. He said that he had a report that Mr. Brandt was soliciting for the union, and handing out cards and that type of thing.

Q. Now, when he had gotten this information from a couple of other people, I think the names— A. Yes. From his employees, his associates.

Q. Did he ever report that any one else, other employees, had been so engaged? A. No, sir.

Q. Other than Brandt? A. No, sir.

Q. Any other of your supervisors in that store ever report to you about that, that other people—A. About other people, no. Just on Mr. Brandt. He was the only one that was that flagrant I guess.

Q. We don't know what you guess. That was the only one?

A. Only one. That was the only one I was ever made aware of.

Q. All right.

[616] Excerpts of Stenographic Transcript of Hearing of January 8, 1974.

PROCEEDINGS.

AL KAYE called as a witness, having been first duly sworn by Judge Cohn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Miller) All right. A. My name is Al Kaye, K-A-Y-E.

Mr. Appell: Your Honor, before we begin may the record show that Laura Gribbins is not yet present, and my office advised me that she called from the Long Island Railroad Station and asked for directions how to get here from there so she's apparently delayed.

Judge Cohn: Well, are you making a motion not to proceed until she gets here or what?

Mr. Appell: If your Honor wants to proceed I wouldn't object, but I think the record should show that she hasn't arrived yet.

Judge Cohn: Well, because she hasn't participated in the proceeding other than as a witness, and as I indicated at the commencement of the proceeding here interests in the proceeding are generally aline with yours, and while I would appreciate that you would want her here during the [617] interrogation of this witness, I really don't think it's warranted to delay the proceeding for an indefinite limit of time awaiting her presence, and Mr. Brandt is here, and he can confer with you concerning the testimony, and if you want a

short recess when she arrives for the purpose of bringing her up to date as to what the testimony was I will grant that.

Mr. Appell: Thank you, your Honor.

Q. (By Mr. Miller) Mr. Kaye, are you employed by J. W. Mays? A. Yes, I am.

Q. In what capacity? A. I'm the store manager of the Massapequa store.

Q. How long have you had that job? A. Six years.

Q. Were you employed by Mays before that? A. Yes, I was.

Q. In what capacity? A. Floor manager.

Q. Where? A. Jamaica store.

Q. How long were you there? A. Approximately two years.

[618] Q. Now, as floor manager what are your—I beg your pardon, as store manager what are your duties? A. I oversee the entire operation. I have various floor managers under me who I delegate duties such as operational duties. I have a merchandise manager who veers in the direction of merchandise such as type of merchandise, and merchandise that we should be getting into the store, and merchandise that he feels is not for our store, things of that nature.

Schedules, cleaniness-

Judge Cohn: Schedules of what?
The Witness: Of employees, sir.
Judge Cohn: Work schedules?
The Witness: Work schedules.

Q. Do you see whether the floors are manned correctly?A. Personnel is part of my job.

- Q. Who is your superior? A. Mr. Katz.
- Q. Do you have any assistants? A. Yes.
- Q. Who are they? A. Mr. Zayle is my assistant store manager, and I have a third man, Mr. Z.
- Q. What is—just for the record, what is his full name? [619] A. Mr. Zinkofsky. I believe that's cap Z-I-N-K-O-F-S-K-Y.
- Q. About how many people are employed at the Massapequa store? A. Approximately six hundred and fifty people.
- Q. Do you know what the turnover rate is at Massapequa? A. We turnover—we send out for the year '73, I believe it was 1,500 forms. That would be about, not quite two and a half times the amount of people that we would turnover.
- Q. Now, is that a new situation for that fiscal year? A. No, not a new situation.
- Q. When was the last fiscal year, do you know? A. July of '73.
 - Q. Now, do you know a Evelyn Upton? A. Yes, I do.
 - Q. Is she employed by J. W. Mays? A. Not at this point.
 - Q. What happened to her? A. She resigned.
- Q. About when? A. It would have to be approximately, I don't know the exact date, around July.
- Q. Did you speak to her—at or about that time? A. Yes, I did.
- Q. And what did you say to her and what did she say to you? [620] A. At the time her supervisor was a Mr. Tom McCaffrey, who had come to me saying there was dissension in the department, and that she was one of the large problems. I asked Mr. McCaffrey to bring Miss Upton to my office, so that I could discuss this matter with her, saying that she was—there was having dissension in the department itself, and that to see if she could rectify this matter.

After much discussion she said she would rather resign for personal reasons.

O. Did she in fact resign? A. Yes, she did.

Q. Is Mr. McCaffrey working for Mays? A. Not employed at J. W. Mays any more.

Q. Do you know where he is? A. I believe he got a civil service job of some sort.

Q. Did you order that Mrs. Upton be kept under surveillance? A. At no time.

Q. At the time that Mrs. Upton resigned, as you testified, did you know of any union in—any union connection that she had? A. Absolutely not.

[621] Q. What steps do you take on behalf of Mays with respect to pilferage? A. We have both security guards and we have protection. Security is for our doors. And our receiving area, which is in the rear of the store. And protection takes care of the inside of the store. Which would be customers and employees.

Q. The inside of the store security that you're talking about, are they known as 38's? A. That's correct, sir.

Q. Do they wear uniforms? A. No, they do not.

Q. How many do you have at this time? A. At this present time we have five.

Q. Did you have more at one time? A. Yes, we did. We had six at one time.

Q. Have you been trying to look for a replacement? A. We're always looking for 38's.

Now, how much—do you know what the shrinkage was in the inventories as of the close of the last fiscal year, for Massapequa? A. I think the adjusted—I believe the figure was \$234,000.

- Q. Now, how long has this, what I call problem, been continuing at Massapequa? [622] A. As long as I've been there, that I know of.
- Q. Did it exist at the store at which you were previously? A. This is a continuous problem that all stores of our type have.
 - Q. Do you-strike that.

Do incidents involving theft or suspected theft or pilferage take place let's say up to this very day? A. Absolutely does.

Q. The employees of Massapequa, is there an entrance for them?

Judge Cohn: Mr. Miller, excuse me, but as I had several colloquies with the counsel for the General Counsel during his case, and I would like to direct those same remarks to you in the presentation of your case, many of the questions that you have propounded of Mr. Katz, and he gave answers, and so much of this is really almost matter of common knowledge, and certainly it's not controverted—Mr. Katz's testimony on these general matters concerning number of employees, concerning shrinkage, concerning the matters of general theft and so forth really is, as I say, not controverted, at least as of the moment.

Now, this record is getting to be pretty long at this point. And I think we ought to—let's get down to the issues in this case.

[623] I'm not suggesting that these questions are not germane to the issues. I'm just saying that as I said to counsel for the General Counsel some matters are not controverted. Let's get down to the points which are.

Mr. Miller: I understand precisely what you're saying, and if it were not the fact that I too must make a complete record and not risk the intermediate report

coming out whereby the Administrative Judge would say that he has not been supported in this by other witnesses would be very happy to do what you say.

I know exactly what you're saying. I find it repulsive to ask the same questions. I understand exactly. But I've had these in intermediate reports, and that's why I'm being so careful.

After giving the facts on issues like that, there seems to be no basic denial that there are security problems and serious ones I wanted to bring out in that case, and that it's been a long standing problem, I don't have to go ahead with it.

I quite agree. And I would like myself to get rid of that sort of stuff. So I will heed your admonition, and I will do my best to restrict myself to those things where I believe the issues to be, and I will hope that I am not taking an undo risk in doing so, but I will heed your admonition because I find these questions myself to be [624] obnoxious. They are repetitive, and I indeed—I had intended to ask others of the same thing. Now I am not.

Judge Cohn: Thank you.

- Q. (By Mr. Miller) Now, who is Harry Schob? A. He's a supervisor of our maintenance housekeepers.
 - Q. Is he in the room? A. Yes, he is.
- Q. Now, how frequently do you speak to Harry Schob? A. I speak to him every day.
 - Q. What does he do?

What is he and his men suppose to do? A. He supervises the cleaning both inside and outside of the store, lavatories, mopping, that is all part of his duties, both inside and outside the store.

Q. Do you remember having a conversation with Mr. Schob on or about June 7th? A. Yes, I believe I do.

Q. And what-tell us what that conversation was about?

Judge Cohn: When was this?

Mr. Miller: On or about June 7th, 1973.

Judge Cohn: Thank you.

A. He came to me and said—Harry Schob came to me and said that Mike Brandt had approached him and his men originally to start in the cafeteria on their break while the maintenance housekeepers were on the break, this was [625] about 7:00 in the morning, I believe, and again had approached him on the working and selling floor in the dress area on the second floor and he was stopping him and his men from working.

He was discussing union matters and had asked them if they wanted to join and if they wanted a card.

- Q. Well, when you say they, was Harry Schob included? A. Yes. Harry Schob was in there with his men. There were three or four men there at the time fulfilling their duties.
- Q. Did he mention any other names? A. Yes. There was George Storm and Newcomb, and Murphy, I believe it was.
- Q. Is Newcomb an employee of Mays? A. No longer employed by J. W. Mays.
- Q. What happened to him? A. Resigned. Back to school or something, I don't know.
- Q. Was that the only subject of the conversation with Schob? A. I believe so.
- Q. Now, what did you do then? A. I called Mr. Katz to inform him of this because he's in charge of all labor and union matters.
- Q. By the way, did you see Brandt that morning? [626] A. Yes. I believe when I was coming into work I saw him.

(Laura Gribbins enters the room.)

Judge Cohn: Let the record show that Miss Gribbins has now entered the hearing room.

- Q. Now, in going to work, what is your normal time of arrival? A. Between eight and a quarter after eight in the morning.
- Q. How do you come in? A. I come in through the Unqua Road door.
- Q. Excuse me, is that the employees entrance? A. That's the employees entrance.
- Q. And then what do you do? A. I walk across the lower level, get the escalator to the main floor, make a right turn, get the escalator to the—from the main to the second floor. And it was from the escalator to the second floor where I saw Mike Brandt talking to somebody over there.
- Q. Do you know who you saw him talking to? A. Yes. Fazio.
- Q. What did you do when you saw them talking? A. Nothing. I proceeded to go into my office.
- Q. What kind of work does Mike Brandt do—did Mike Brandt do, do you know? [627] A. Maintenance helper work. Lighting bulbs and ballast, and stuff of that nature.
- Q. Did he do any other kind of work? A. He might have done a little carpentry for the maintenance helper shop there.
- Q. What was Fazio's job, do you know that? A. Fazio, I believe was a carpenter's helper.
- Q. When you come into work in the morning, what sections do you pass by before you get to the escalator? A. I start in at the walking toward the escalator on the left side aisle of stationery department. On my right side will be the toy department and as I continue walking on the left side it will be the hardware department. And then I'll reach the escalator.
- Q. Is there any way of getting to the escalator from the employees entrance without passing by the hardware department? A. None whatsoever.

And would you describe the escalator system in Mays? A. On the right side of the—as we come in, the left side would be going down, the right side would be going up.

What so you have— A. In the center you have stair-0. cases.

Q. Are those the only escalators in the store? A. Outside of the second floor; yes. That's the only escalators in the store.

[628] A. Now, did you have a conversation with Schob and Brandt together? A. No, I did not.

Q. Did you speak to Schob when Mr. Brandt was present? A. No, I did not.

Q. Did you speak to Schob and look at Brandt? A. No, I did not.

Q. Were you-getting back to June 7th testimony of yours, I believe you said you told Mr. Katz about this Schob report; is that correct? A. That's right.

And then where was Mr. Katz? A. Mr. Katz was at Brooklyn headquarters.

How did you contact him? A. By phone.

And what did you say to Mr. Katz and what did Mr. Katz say to you?

Judge Cohn: Did you hear the question?

The Witness: Yes, I don't remember now if I spoke to Mr. Katz on the phone or he was at the store at that time. I'm not sure of the day.

Judge Cohn: Well, do you remember the conversation?

The Witness: I believe it came—I think this is what happened.

I spoke to Mr. Katz, I don't remember if it was on the [629] phone now, I'm not sure of that. It could have been in my store. And I told him that Mike

Brandt was soliciting people on the selling floor, and told him who it was that he had been soliciting.

Judge Cohn: Who did you tell?

The Witness: I told that to Mr. Katz.

Judge Cohn: Did you tell Mr. Katz who it was? The Witness: Yes. I told him Harry Schob, and

people in his working crew there.

Q. (By Mr. Miller) What did he do? A. Mr. Katz called the attorney, Mr. Miller.

Judge Cohn: Were you present at that time?

Excuse me.

Mr. Miller: Sorry. I was just about to ask the same question so it's all right.

A. Yes, I was present at that time. He was in my office. I'm almost sure he was in my place of business at that time. I don't believe I called him. I have to retract that.

Q. Okay.

Now, were you present when he called? A. Yes, I was.

- Q. Now, as—what did he do when he spoke to the attorney? A. He had a pad there, he was writing down some information [630] he was getting over the phone.
- Q. Then what happened after the conversation ended, I mean the telephone conversation? A. The telephone conversation, Mr. Katz says get hold of Mike Brandt and get his supervisor, Paul DeRonde and have him come into the office.
 - Q. And did you do that? A. Yes, I did.
 - Q. And did they appear in your office? A. Yes, they did.
- Q. At that time who was present in your office? A. Mr. Paul DeRonde, Mike Brandt, Mr. Katz, and myself.
- Q. Now, did Mr. Katz speak? A. Yes, he spoke to Mike Brandt.
- Q. What did he say? A. He says he was—he had been soliciting in the store on the selling floor during working

hours, and that he told him this is something that he cannot do. He also told him where he could solicit. He was able to solicit in the cafeteria, the parking lot, the locker room.

Q. Did he mention the selling floor? A. Yes, he said—

Mr. Appell: Objection.

Mr. Miller: May I-

[631] Judge Cohn: Overruled.

- Q. Did he mention the selling floor? A. Yes, he did.
- Q. What did he say about that? A. He says you could not solicit on the selling floor.
- Q. Now, what did Brandt say? A. He says, his words were "Who me? I did nothing like that".
- Q. How did this thing end? What happened that day? How did it end? A. Well, Mr. Katz says that he was putting in a warning into his folder telling him that he had warned him in this matter, and that he is not to do this again.
- Q. And then what happened? A. He left the room, Mike Brandt, and that was it.
- Q. DeRonde then leave? A. Paul DeRonde and Mr. Brandt.
- Q. And then what did you and Katz do? A. Just walked around the store, checking out the store.
- Q. Do you walk around the store in the course of your day? A. Most of my day is done doing that.
 - Q. You said you have an office? A. Yes, I do.
- Q. How much time do you estimate you spend in your [632] office on an average day? A. I get in very early, and I try to take care of my paper work and my mail and stuff of that nature so that I could be on the floor most of the day and see what's going on.
- Q. How much would you estimate the most to be? A. I think—I could spend an hour and a half, two hours tops in my office.

Q. And the rest of the day you do what? A. I go through the store. I could be—I have a mall that I take care of too so I can either be on the outside checking on the various stores or I could be on the inside of the store.

Various duties that I have to take care of that I delegate to my other people that work for me in going around there. If I see something that's wrong I'll say to Mr. Zayle, see that this is taken care of, make a notation of it. It's taken care of.

- Q. You said before you had two assistants, Mr. Zayle and— A. Mr. Zinkosky.
- Q. And one to whom you referred to as Mr. Z. Is that the name that he is commonly associated with? A. Easier. Simple for us to call him Z.
- Q. Do their duties also consist of walking around the [633] store? A. It's a large store and we have—this is one of our primary duties to keep walking around, see that the store is ship shape.
- Q. How long has this walking around procedure existed? A. As long as I've been there and before that. This is a duty of all managers.
- Q. Now, did you cause Mr. Brandt to be put under surveillance? A. No, I did not.
- Q. Did you issue threats against Mr. Brandt? A. No threats at all.
- Q. Did you issue any warnings to Mr. Brandt concerning union activity? A. I did not.
- Q. You testified about Mr. Katz before. Do you know of any others? A. No, I do not.
- Q. Did you see Mr. Brandt talk to Laura Gribbins in the store? A. No, I did not.
- Q. Now, I believe you testified that Mr. Paul DeRonde was Mr. Brandt's supervisor? A. Yes, I did.
 - Q. Is Mr. DeRonde in the room now? [634] A. Yes, he is.

Judge Cohn: Is Schob over DeRonde?

The Witness: Two different departments, sir.

Judge Cohn: Which is which?

The Witness: Mr. DeRonde is the head of maintenance and Mr. Schob is head of maintenance housekeeping.

Q. For the sake of just clarifying something, the name maintenance housekeeping came into effect when? A. I believe it was in '73 sometime. I can't pinpoint it, but we received a bulletin stating as of this date porters will no longer be known as porters, but will be used the title of maintenance housekeeper.

Q. Did Mr. DeRonde ask Mr. Brandt to sign a statement? A. At what point was it?

Q. Well, if you know? Let's say the month of June or the month of May or somewhere in that time? A. Yes.

Q. How did you come to know that? A. Mr. DeRonde, I believe, was discussing with me saying that Mike Brandt was not fulfilling his duties completely, and he had gone around and checked an area which wasn't fully covered by what what he should have been taking care of, such as bulbing and stuff of that nature.

Q. Did you do anything about that? A. Mr. DeRonde takes care of that department.

[635] Q. I see. Did you do anything? A. No, I did nothing.

Q. You have testified about warnings. When did the warning system come into effect? A. It's been going on as long as I know.

[637] Q. (By Mr. Miller) Do you recognize Respondent's Exhibit 4?

(Handing document to witness.)

- A. Yes, I do.
- Q. Is that still being given out? A. No, it's not, sir.
- Q. When was it stopped?

Judge Cohn: This again, Mr. Katz explained that. Mr. Miller: All right. Good enough. If that's an example of what you had in mind, fine.

[638] Q. Now, do you get requests for charities to come in to solicit Mays? A. All these are handled through our Brooklyn headquarters.

Q. You don't—you're not the one who gives permission? A. No, I don't give permission.

[644] Q. Now, do you know Laura Gribbins? A. Yes, I do.

Q. What happened to her with respect to Mays employment? A. She was terminated.

- Q. Who did it? A. I did.
- Q. Now, where did Miss Gribbins work? A. Display department.

Mr. Miller: Now, in keeping with your admonition, I will go into what I think are the significant events and skip the other insignificant areas of inquiry.

[648] Judge Cohn: Well, the only one you're talking about now is the one in the pocketbook; is that right?

[649] The Witness: At this point I'm talking about the one in the pocketbook.

Judge Cohn: Go ahead.

Q. (By Mr. Miller) All right. A. I called Laura Gribbins up to the office, and asked her where she had gotten this body suit, and where her tickets were and her receipt. She said she had purchased these a week ago, she didn't have no ticket or receipt.

I asked her if she had taken a discount. She said she never takes a discount. I says why do you have this body suit in your bag. And her answer to me was the fact that she had a date and she was going to change her body suit—her top before going out.

I asked her did she know it was a violation to be on the company selling floor. She said, yes. I says I'm going to issue you a warning for being on the selling floor, a verbal warning for being on the selling floor, I says, and see that it doesn't happen again.

Q. At the time that you had issued her this warning that you testified to, did you complete the investigation of any pantsuit? A. No. I wasn't satisfied with that. There was nothing settled with the pantsuit on that.

[650] Q. Well, but you—you were not satisfied with the pantsuits? A. No, I wasn't satisfied.

Q. And you gave Miss Gribbins a warning? A. A verbal warning, telling her that she could not be on the selling floor with her purse, and that any merchandise taken out must be signed in for.

Q. Is that all you did? A. That's all at that time.

[678] Q. Did you learn of any connection between Miss Gribbins and the union? A. Yes.

Q. When did you first learn that? A. When the charge was filed.

[679] Q. Now, did you see an employee other than Miss Gribbins carry a handbag on the floor, I mean a handbag? A. No, I don't believe so.

Q. Did you see them carry a transparent plastic bag? A. This is issued to all female employees, transparent bag, about six inches in diameter.

Q. * * * * [680] Do you know a man called John Cannon? A. Yes, I do.

Q. Who is he? A. He was a night maintenance helper.

Q. Is he now with Mays? A. No, he's not.

Q. What happened to him? A. He just disappeared. He left without notice.

Q. Do you know a Christopher Lynch? A. Yes, I do.

Q. Is he with Mays? A. No, he is no longer employed by Mays.

Q. Where is he? A. I believe he went to college, he went back to school.

Q. Did you speak to Harry Schob about Lynch and Cannon? A. Yes, I did.

Q. Will you tell us what the circumstances were that gave rise to this conversation? A. Sometime in the evening, I don't remember exactly when, I was on that night, and I was down in the lower level and I saw Christopher Lynch and John Cannon come out of the passenger elevator and there was no elevator operator there, they had no business running that elevator.

So I spoke to Mr. Schob and I says "What the devil [681] is going on there? What is he running an elevator for? You find out what's going on."

Judge Cohn: You never spoke directly to the man involved?

The Witness: I try to go through their supervisor. Is there any problems after that point then I interject myself but I try to work it through the supervisor.

Judge Cohn: So the answer to my question is, no. The Witness: No.

- Q. (By Mr. Miller) Is the use of that passenger elevator authorized if an operator is not present? A. No, at no time.
- Q. Did you speak to DeRonde about this? A. He wasn't on that night. And all I spoke to was Mr. Schob.
- Q. Now, did Schob come back and tell you about this incident? A. Yes, he did.
- Q. What happened? Tell us what happened when he came back? A. He said to me that John Cannon was talking to Christopher Lynch pertaining to the union, what it would do for him, and would give him more money, and less hours, and stuff of that nature.
- Q. What did you do to Lynch? [682] A. I did nothing to Lynch. I went to Harry and asked him will he please ask Mr. Lynch if he would make a statement to that effect.
- Q. Did you tell him anything else? A. Yes, I says don't use any threats or any pressure. This has to be of his own free will to go ahead and do something of this.
- Q. And what happened to Lynch when you found out? A. Nothing that I could remember.
- Q. Well, did you do anything to Lynch? A. No, I didn't do anything to Lynch.
- Q. Do you know of anybody—did you order anybody to do anything to Lynch? A. No, nothing at all.

- Q. And did you discipline Cannon in any way? A. Not whatsoever, none.
- Q. Did you order anybody to discipline Cannon? A. No, I did not.
- Q. Did you place them under surveillance? A. No, I did not.
- Q. At the time that you saw Lynch and Cannon, did you know of any union affiliation of Lynch or Cannon? A. No. I had no knowledge of that.
- Q. Well, did you know—when was the first time you learned about Cannon being associated—[683] A. Wait a minute. There was a hearing inbetween there that Cannon testified too.
- Q. Is that what led you to believe that he was a member of the union? A. Yes.

Mr. Appell: Objection.

Judge Cohn: Sustained.

Don't lead him.

Mr. Miller: I didn't quite hear that, Your Honor, I didn't hear the last statement?

Judge Cohn: Well, I thought that was a leading question. You want to rephrase it?

Mr. Miller: All right.

Q. (By Mr. Miller) I don't have to ask the question. I just withdraw the question.

Well, did you mention this incident to anybody else? A. I may have, I don't recall.

- Q. Now, do you know a man called Murphy? A. Yes, I do.
- Q. Who is Murphy? A. Murphy was a maintenance housekeeper.
 - Q. Does he have a connection with the union-Murphy?

A. I only know about it when he was—when the charge was brought up and he testified.

Q. Now, what are the duties of these maintenance [684] housekeepers? A. Sweep, mop, dust, inside and outside the building.

Q. Now, when you say outside, would you please describe it? A. The curbing more or less, as far as the curbing and the mall, that's it.

Q. Who takes care of the parking lot normally? A. The parking lot is taken care of by maintenance helpers. They have a big sweeping machine that they use.

Q. But the maintenance housekeepers take care of just the outside immediately adjacent to the building itself? A. That's correct.

Q. How long have the porters or I beg your pardon, the maintenance housekeepers, taken care of that outside? A. As long as I've been there.

Q. Now-

Judge Cohn: I don't quite understand your testimony. Is it the maintenance housekeepers' responsibility to clean the parking lots or is that somebody else?

The Witness: No. Maintenance—there's a distinction between the two. In the immediate area, just off the building line, we take care of that. Maintenance housekeeping. The parking lot per se is taken care of by the maintenance helpers who have a large sweeping machine that does that.

[685] Judge Cohn: The maintenance helpers do not come with this maintenance housekeeping?

The Witness: Two different departments.

Judge Cohn: Do the maintenance helpers, are they under the regular—

The Witness: Maintenance helpers are under Mr. DeRonde. Maintenance housekeepers are under Mr. Schob.

Judge Cohn: Thank you.

- Q. (By Mr. Miller) What happened to Murphy? A. Mr. Schob—
 - Q. What happened to Murphy? A. He was terminated.
 - Q. By whom? A. By me.
 - Q. All right.

Now, would you please tell us the circumstances under which you terminated it? A. I received a call from Mr. Schob one day stating that Mr. Murphy refused to go outside and do any sweeping.

- Q. When was this? A. I don't actually recal! the date, but it would have to be either in July or August. I don't recall definitely the date. And—
- Q. You sure there was no snow on the ground? A. No. It was very nice outside. It could have been [686] June or July. It was a very, very nice day. The sun was shining at that time. It would have been early summer or spring at that time.
- Q. What happened, tell us what happened? A. Well, he refused to do any sweeping on the outside, and Mr. Schob said he thought I ought to talk to him about this, being it was part of his duties. I told Mr. Schob and Mr. Murphy both to come up to my office. And I said to him "Murphy" I says "Your job is to sweep, dust, clean, is there anything wrong with going outside and sweeping?"

He says "I refuse to do this." Well, I says "Why do you refuse to do it?" He says "I don't want to go outside and sweep". I says "You ought to consider that Murphy." I says "You've done a fairly good job here. We have no complaint with your work." He says "Before I go out to sweep I'd rather be terminated." So I had nothing left to do this but terminate him.

Q. Did you intend to terminate Mr. Murphy when you summoned him? A. No, I did not.

Mr. Appell: Objection. Judge Cohn: Overruled.

Q. What are the dumpsters? A. A dumpster is a large receptacle that the garbage is thrown into.

[687] Q. Is that outside the building? A. Just outside the receiving area, yes.

Q. It's outside the building? A. It is.

- Q. And how are the dumpsters used, will you please tell us and who uses them? A. There are hand trucks and the maintenance housekeepers use them. Hand trucks are wheeled in through whatever part of the building, through the main floor, through a fire retarding door, through another fire retarding door, down a ramp and just outside the receiving area there is this large receptacle, maybe six, eight cubic feet receptacle, and this garbage with a special to supervise, to watch this, they unload this garbage into this receptacle.
- Q. Does all the garbage go into the dumpster? A. Oh, no. A lot that go on the ground.
- Q. Who sweeps up the debris? A. Whoever is dumping the garbage.
- Q. Mr. Murphy swept up the garbage outside the dumpsters? A. He most certainly did.
- Q. At the time that you terminated Murphy, did you know of his—of any union connection between Murphy and any union? A. None whatsoever.
- Q. Did you order Murphy kept under surveillance? [688] A. No reason for me to do that.

[689] CROSS EXAMINATION:

Q. (By Mr. Appell) Mr. Kaye, how long have you been with Mays? A. About ten years.

[693] Mr. Appell: I call upon Respondent to produce all records that show new hires in maintenance housekeeping in June, since June—beginning June '73, and since that date to the present time.

I call upon Respondent to produce all records showing employment of people from Career Temporaries through the entire year 1973.

Mr. Miller: Apart from the obvious harassing nature of such a request, we have been called upon to produce other things which counsel has conspicuously failed to utilize. He's looking for something now, I don't want to keep helping him, but I'll say this, we have never said that Dashefsky was dismissed because there wasn't any work for them to do.

So consequently this is basically irrelevant. We have told you and I have told you in the absence of the witnesses why Dashefsky was let go. So all this is really beside the point and it's just another case of harassment.

Judge Cohn: Well, first of all, Mr. Appell, I agree that to the extent that if you wanted certain information regarding this, it seems to me that subpoenas could have been issued prior to the hearing or during the investigation or something like that.

This is a little late in the day to be calling [694] upon the production of records of this nature.

Mr. Appell: Your Honor, this is designed to counter the testimony that has been elicited in Respondent's defense.

Judge Cohn: I understand that. But this case was investigated, and you certainly must have known prior to the testimony on direct that the company had utilized this temporary agency or agency which furnished temporary employees. I think it's a little late in the day to be calling upon the Respondent to produce this information.

On the other hand, I have in my notes based upon this colloquy that I've referred to, Mr. Miller, that Mr. Fazio was terminated or laid off on or about June the 8th because of a reduction in force.

Mr. Miller: That's right.

Judge Cohn: And I don't recall the testimony, but normally you associate a reduction in force by, for the reason that there wasn't anything for him to do or that the company was experiencing some economic difficulties, indeed there's been testimony by Mr. Katz and this witness that the—in June and July, the particular department—

Mr. Miller: Display.

Judge Cohn: Display?

Mr. Miller: Display is the slowest month. We also made clear I believe, from the testimony, that these are departmental retios which is constantly weighed, and that [695] this does not have anything to do with the need for other jobs that come up at that time.

That they go department to department. I think that's fully be the testimony. So that if I may, if your permission—

Judge Cohn: Go ahead.

Mr. Miller: So that the fact that they would use or continue to use a temporary agency at that time would have nothing to do—nothing to do with the cut back in the display department.

Judge Cohn: Well, that gets into a matter-

Mr. Mille: It goes into argument. That's right. But on the other hand, the statement that you made was not quite, in my judgment, not quite reflective of the exact evidence.

More important I think, however, there's been no change here. They said they had hired him for this day. So that—I don't know what's being proved at this point.

Judge Cohn: I assume that General Counsel, this again is an assumption, that he will argue to me that the company is laying off employees, regular employees at a time in which it's expending money to hire temporary employees from an independent agent.

Mr. Miller: There's a very obvious answer to that. Judge Cohn: There may be, and I don't want to get [696] into the argument, but all I'm saying is that that is the reason I think he's making the argument. If it's not then he can—

Mr. Miller: Well, the existence of a temporary agency does not prove that we have a superfluity of porters. It does not prove anything really about Dashefsky. He's asking this question with respect 'Dashefsky, I assume.

Judge Cohn: All right.

We can get into the argument on the merits of the case at another time. All I'm doing, trying to do at the present moment is to rule upon the evidence, and whether or not it's relevant.

And all I can say is that at this point in time I tend to agree with you, that it's a little late in the day to be calling upon you to produce some massive amount of evidence, which could have been called upon earlier, and which counsel, with a reasonable investigation of the case, should have realized was relevant.

[699] Q. Well, Mr. Schob spoke to you on June 7th, 1973; is that correct? A. That's correct.

Q. What did he say to you at that time? A. That Mr. Brandt had spoken to him in the cafeteria, pertaining to union matters, and also the fact that while he was working on the second floor in the Dress Department [700] with other people, with other helpers in Mr. Schob's department, while they were doing their work, he was accosted to and spoken to regarding these matters. He wanted to give out cards.

Q. Did Mr. Schob say what time Brandt had spoken about the union in the cafeteria? A. Yes. It was early in the morning.

Q. And what did you say to Mr. Schob at that time? A. I asked him if he would get me a statement as to what occurred during this conversation between Brandt, him and the other people.

Q. Did he do that? A. Yes, he did.

Q. Now, was it on that day that he did it or was it a later day? A. I don't really remember.

Q. Well, what did the statement say? A. I couldn't recite that statement if my life depended on it right now. I don't know what date it said on it. It could have been the 7th. It could have been the 8th, I don't know.

Q. Was it on a yellow piece of paper? A. It was on a yellow piece of paper, if I remember correctly.

Q. Printed or script? [701] A. In script.

Mr. Appell: May I ask that counsel for Respondent produce Mr. Schob's statement so I can have this witness identify it if he can.

Mr. Miller: This was the statement that I challenged Mr.—the General Counsel to put in yesterday and he gave it back to me and he refused. Now what are we playing games here?

What are we playing here? What is this, a script, not script and that sort of stuff.

Mr. Appell: I will offer it in evidence, Your Honor, if this witness can identify it as the statement Mr. Schob wrote out.

Mr. Miller: I would like Your Honor to know that unless I receive an order from you, I no longer have any intention of assisting the General Counsel in his investigations, and I must say that I bitterly resent him hearing something, he hears something and he immediately makes all sorts of demands.

His case should have been prepared before.

Judge Cohn: Well, let the record show that counsel for Respondent has handed counsel for the General Counsel what appears to be a—two yellow sheets with writing on [702] them.

Mr. Appell: May I ask that this—these papers be marked as General Counsel's Exhibit 11 for identification.

(The above referred to document was marked General Counsel's Exhibit No. 11 for identification, as of this date.)

Q. (By Mr. Appell) Now Mr. Kaye, I show you General Counsel's Exhibit 11.

Is that the statement Mr. Schob gave you that you e referring to in your testimony?

(Handing document to witness.)

- A. Yes, it is. Can I see that again, please? Yes, it is.
- Q. And did you read it on the date it was given to you? A.Yes, I did.

Mr. Appell: I offer it in evidence, Your Honor.

Mr. Miller: No objection.

Judge Cohn: All right.

Hearing no objection, G.C 11 will be received.

(The above referred to document marked General Counsel's Exhibit No. 11 received in evidence, as of this date.)

Q. (By Mr. Appell) Now, and it is a fact Mr. Kaye that you knew that Mr. Murphy had something to do with the union before he was discharged, isn't that so? [703] A. Only before he was brought before charges, when he testified.

Q. Do you recall reading about Mr. Murphy in that statement that Mr. Schob gave you; didn't you? A. I would have to read it again to refresh my memory.

Judge Cohn: Let the record show that the witness is reading the statement.

Do you remember the question?

The Witness: Did I know that Mr. Murphy was a union member?

Judge Cohn: Before he was discharged?

Mr. Appell: I asked him if he had anything to do with the union, if he had anything to do with the union.

Mr. Miller: No, he did not.

Judge Cohn: Rephrase the question.

Q. (By Mr. Appell) Mr. Kaye, isn't it a fact that before Murphy was terminated you knew that he was involved with the union? A. I knew he had been approached to sign a card, that's all I know.

Q. Did Mr. Schob tell you that before he wrote out the statement? A. No, in the statement he explained that to me.

Q. What did he tell you? A. He told me who was present at the meeting with Mr. [704] Brandt, that's all he told me.

Q. This part about Murphy was the first mentioned in the written statement and not previously orally? A. No, that's not so.

- Q. It had been mentioned to you? A. That's correct.
- Q. Now, prior to this discussion with Mr. Schob, Mr. Katz had asked you to let him know what you heard at ut the union at Mays; didn't he? A. I let Mr. Katz know ay hing that happens in the store, union trouble, departed 3, payroll, anything pertaining to the store. He is my immediate superior.
- Q. Didn't Mr. Katz ask you to report on this particular matter to him? A. No, he did not.
- Q. He never did? A. No. I reported all union matters, anything pertaining to the store, I report to Mr. Katz.
- Q. And did you ever ask Mr. Schob to let you know what was happening with the union, if he heard anything? A. No, I never did.
- Q. Never did. In other words, he came to you totally on his own? A. That's right. H says he was stopping his men from working.
- [706] Q. And you told him that Brandt was soliciting for the union; am I correct? A. That's correct, on June 7th.
- Q. Then you testified that you got Brandt and DeRonde into your office on June 7th; is that correct? A. That's correct.
 - Q. And Katz was present? A. Mr. Katz was present.
- Q. And was it Katz who instructed you to get them in or was it your own idea? A. Mr. Katz informed me to get Mr. DeRonde and Mr. Brandt to come into my office.
- Q. Now, there was a written warning issued to Brandt; is that correct? A. That's correct.
 - Q. Did you sign it? A. No, sir.
 - Q. Who did? A. Mr. Katz.
- [707] Q. And what did that say? Did you see it? A. Yes, I read it.

Q. What did it say? A. In it he warned Mr. Brandt not to solicit on the selling floor. And he also told him where he could solicit. He could solicit in the parking lot, in the cafeteria, in the locker room.

Mr. Appell: I call on Respondent to produce that written warning?

Mr. Miller: Let the record show, please, that I'm looking through my files here to see if I can find any paper that happens to come that counsel to General Counsel's mind every time he asks a question.

[708] Mr. Miller: Well, I have here a written warning, and because of Your Honor's indication, I am forwarding it, I forward it under complete protest, I would ask, Your Honor, to reflect upon my opening statement to to indicate how this case was put together.

[710] Judge Cohn: It's well established, and you certainly are aware of the fact, that the Board and the Courts have held on this type of situation that where the Respondent has in its custody records and documents which are relevant to the issue in the case, and the reasons for a particular discriminaties determination, that the failure to produce such documents may be taken by the tryer of the fact in consideration in determining the motivation for the alleged discrimination.

And if you don't produce something, I'm not talking about burdensome records which are belatedly called for, and that sort of thing, I'm talking about one piece

of paper which was assertedly placed in an employees personnel file.

If you don't produce it, then I'm certainly going to [711] take into consideration in determining, along with all the other facts, in determining the issue in the case regarding discrimination. And that's all that I'm going to say about that. So you can try your case any way you want.

You can comply with the requests or not comply with the requests. I will indicate whether or not I consider it a legitimate request and if I do and you don't comply I'll take that into consideration.

Proceed.

- Q. (By Mr. Appell) Now, Mr. Brandt's termination had nothing to do, did it, with his improper performance of any duties? A. Mr. Brandt's termination was due strictly to disregarding a warning.
 - Q. As to solicitation? A. As to solicitation.
- Q. It had nothing to do with his performance on molding; did it? A. Nothing was mentioned about that as far as I recall.
- [712] Q. And you are the store manager of Massapequa? A. That's correct.
- Q. Respecting charity drives, there are many such drives at Mays, are there not? A. All charity drives are handled through Brooklyn headquarters.
- Q. I asked you, there are many such charity drives; are there not? A. No.
- Q. How many a year? [713] A. There could be one or two.
- Q. Have you ever held a meeting on company time with employees to urge their request for a particular charity or cause?

Mr. Miller: Objection. I object to any further question along this line of the ground that an occasional charitable venture is no basis, is absolutely no basis whatever for the claim that union's solicitations is allowed on company time. There is no connection between the two.

Judge Cohn: I'm sorry, I didn't get the question. (Whereupon, the reporter read back the last question.)

Judge Cohn: Overruled.

There's been evidence on both sides regarding the presence or absence of—

Mr. Miller: We concede the United Fund was there. I'm saying so what?

Judge Cohn: That's argument. I'm not ruling on whether or not it's legitimate or not. I'm just saying that both sides have brought that into play, and so I'll overrule the objection.

[714] Q. Have you ever held a meeting on company time Mr. Kaye, with employees to urge or request their support for a particular charity or cause? A. Not to my recollection.

Q. Isn't it a fact that just this past year you presided over a meeting and asked employees to purchase bonds for the State of Israel? A. That's a true.

Q. When was that? A. Just before the conflict started in Israel or during the conflict when they needed money so badly.

Q. That would be in or about October 1973? A. Whenever that was, I don't recall.

Q. And what time was that meeting held, if you recall? A. Before store hours.

Q. What time was it held? A. I would say around 9:00 o'clock approximately.

Q. That is on employees working time; is it not? A. Well, all employees don't start at 9:00 o'clock.

Q. How many employees were already working at 9:00 a.m. who attended that meeting? A. I couldn't give you a number on that, but there was a few.

[715] Q. And you requested their presence? A. I called for a general meeting.

Q. And how did you do that? A. Over the microphone.

Q. How many employees normally report before 9:00 a.m. to work at Mays? A. I really couldn't give you an accurate account of that or even a figure near there. They get—store hours are between—open about five minutes of ten. Most people come in between 9:30 and a quarter to ten. This is when we have the majority of our people.

Q. I'm asking you at least about how many people come in before 9:00 a.m.? A. I don't have an idea even. I could give you a figure, I'd be way out.

Q. Well, which classifications of employees come in before 9:00 a.m.? A. Mostly your open-our executives.

Q. How about maintenance people? A. Could be.

Q. Housekeepers? A. Could be.

Q. Display? A. Could be, yes.

Q. Anybody who sells on the floor come in before 9:00 [716] o'clock. A. Not usually before 9:00 o'clock, no.

Q. Sometimes? A. Not usually. Very unusual for a 9:00 o'clock person to be in there.

Q. And therefore, you're saying that you often do not have knowledge of a termination of an employee? A. It's possible that somebody can get laid off without me knowing it or they could resign.

- Q. Can Mr. Hord, for instance, terminate anybody without your approval? A. He don't need my approval for that. He's a supervisor of four stores and he has that authority to terminate. He may let me know about it, but he certainly has that authority.
- Q. Does he always let you know about it? [717] A. He would let me know on occasion.
- Q. Does Mr. Schob always let you know about it? A. Mr. Schob would let me know about it. If there's a problem in his department, he wants to get rid of somebody he might discuss that with either me or personnel.
- Q. Would personnel let you know about it? A. Very definitely so.
- [719] Q. Well, did you personally examine records to determine the need for reductions in 1973? A. I had my personnel director prepare this.

[720] Q. Who is that? A. Mrs. Palmer.

Q. What's her first name? A. Vieta, V 1 E T A. Is that it?

Judge Cohn: Whatever, is that important.

Mr. Appell: I just want to get the name for the record, Your Honor.

Q. Which departments did you determine or did Mrs. Palmer determine were too heavy in June? A. I don't have that information in front of me. That constitutes a whole store. There are 72 departments and I certainly don't remember that.

[721] Mr. Miller: Before we start Your Honor, I think the numbering of the General Counsel's Exhibits are one too few. I think for example, the two that were

introduced today should be 12 and 13, instead of 11 and 12.

I think that Murphy's card, his authorization card was General Counsel's 11.

Judge Cohn: You're right.

Mr. Appell: I stand corrected, Your Honor.

I move for permission to have the documents renumbered accordingly so that the Schob memo of June 7th would now read G.C. 12 and the Katz memo of June 7th would read G.C. 13. I apologize.

Judge Cohn: All right.

I'll direct the reporter to please renumber them accordingly.

Mr. Miller: There's one more point. Your Honor had made certain comments with respect to inferences to be drawn in the case of non-production. I must say that I don't agree with the comments as uttered by my silence was a silence of respect.

I hope it would not be deemed to be a silence that [722] connotes acquiescence in the exact technical correctness of your comments. There are certain things you said which I would differ.

Judge Cohn: You are right. I've had several of my own cases in which that has occurred, and in which I've made the findings which have been supported by Board and Courts. If you would have citations—

Mr. Miller: I'm talking about things in issue. If there was an issue, and if I did not produce something to support that which was in issue, that would be true.

Judge Cohn: I assume that's the basic premise, Mr. Miller, that it has to be in issue. I didn't mean my remarks to mean that you have to produce documents on matters which are not in issue.

Mr. Miller: That's correct.

Judge Cohn: Or which is as I've ruled which are unduly burdensome or untimely.

Mr. Miller: That's true. But I believe the contexts of Your Honor's comments had to do with an inference to be drawn because we did not submit the Katz warning, G.C. 13, and I say as a matter fact it was Mr. Brandt himself who testified he got a warning.

So that I did not produce it simply because there was no issue that the warning was given. And the tenure of your comments, as I understood them, was that my failure to [723] to produce that might have led you, it might have led you, I say, to draw an adverse inference.

Now, if you didn't say that, then I didn't understand you correctly and then of course my difference—

Judge Cohn: It's difficult for me to make a statement, a general statement which which is altogether clear and would cover all situations.

Mr. Miller: That's true.

Judge Cohn: All I'm saying is that when witnesses in this case, it's my recollection that it's your own witness, that testified that a written document was issued, was in the file or was in the custody of Respondent, and request for that document is made and it's not produced, unless a reasonable explanation can be made for its failure of production, then I think under those circumstances it's reasonable to infer that the failure to produce warrants an inference of unfavorable tenure as far as the Respondent is concerned.

Mr. Miller: In this instance, based upon how the reference to the document came about, and coming on cross examination, and after direct testimony taken weeks ago, and there has been no request, except at

this point, I might have been able to say, and I do say, that request for its production now is too late, an afterthought and I would have a right, I believe, to argue that inferences [724] ought not be drawn.

But however, it's in now and I've produced it. I would assume that situation is now muted.

Judge Cohn: I think that's so since you produced it. Mr. Miller: I would wonder whether if on, after several weeks of nothing that there is such a warning, there's a question on cross examination, all of a sudden he says I want it, and I say I'm not going to help you any more, it's too late, whether my failure to give it to you at that point would warrant the drawing of an adverse inference.

And this is the point that I might have wanted to take issue with, but, of course, I agree with you now. Now the thing is muted. It's in. Whatever will be made out of it will be made out of it.

Q. (By Mr. Appell) Mr. Kaye, you recall your testimony with respect to Laura Gribbins? A. Yes.

Q. And I'd like you to explain for his Honor exactly what happened with Laura Gribbins?

Start from the first notification that you got and give the date?

Mr. Miller: I must say I object to that. I cannot [725] believe it's proper cross examination to say, please repeat your story.

Judge Cohn: Well, do you understand the question?

The Witness: He wants me to go over exactly what I went through before.

Judge Cohn: Well, he wants you to tell the story of

what—beginning with your first notification that there was something untold with respect to Miss Gribbins contact with the store, and your connection with it until she was released.

The Witness: I couldn't possibly repeat it in the same order. I can give you a concept of what happened, if this is what you want?

Q. (By Mr. Appell) I would like you to tell us what happened exactly.

Mr. Miller: I take it my objection is overruled? Judge Cohn: Well, there again, I think the witness ought to be able to relate what his connection with any particular set of circumstances is, and I think that's, although the question may have been not worded exactly correctly or something like that, that's what he's asking the witness, and I think that's a proper question.

[735] Judge Cohn: What does Warwel do?The Witness: He also did decorating and dressing.

[760] Q. When did you first learn of any possible affiliation of Laura Gribbins with the union? A. When the charge was filed.

[761] Q. Was it a charge that referred to Laura Gribbins' transfer?

Is that what you're talking about? A. That's what I'm talking about, sir.

O. Aside from-strike that.

When did Mr. Lynch leave the employ of Mays? A. Sometime in the late summer, I believe. I'm not sure of the date. I think it was a—

- Q. Excuse me. A. I think it was later than that. I'm not sure of the date.
 - Q. Possibly in the fall? A. Possibly, yes.
- Q. Is it last month? A. It's very possible that he left last month; yes.
- Q. What was his job? A. He was a maintenance housekeeper.
- Q. Now, there came a time when Mr. Schob told you that Cannon was talking to Lynch; is that correct? A. I told Mr. Schob that.
- [762] Q. You told that to Schob? A. That's right.
- Q. How did you find that out? A. I was walking on the lower level and I saw them come out of an elevator not manned by an elevator operator.
 - Q. I see.

Didn't Mr. Schob once tell you that he saw Cannon and Lynch talking? A. He came to me later—

- Q. Yes. A. —no, I spoke to Mr. Schob, and told him that this is what I had found out, and I don't recall Mr. Schob coming to me and telling me that he had spoken to Cannon.
- Q. You told him that you found out—A. I didn't tell him, I saw him.
- Q. That you saw them talking? A. Coming out of an elevator.
 - Q. Did you hear them talking? A. No.
- Q. Did you have any discussion with Mr. Schob concerning a discussion about the union between Cannon and Lynch? A. Well, Mr. Cannon had testified at a previous hearing, and I assumed that this is what they were talking about.

Mr. Miller: I didn't hear that question. Would you please repeat it.

[763] (Whereupon, the reporter read back the last question.)

Mr. Miller: I don't understand the question, but all right.

Judge Cohn: Well, I don't believe that the answer was responsive to the question.

Did you understand the question?

The Witness: Not a hundred percent. Let's go again.

Judge Cohn: Would you rephrase the question.

Mr. Appell: Yes, Your Honor.

- Q. (By Mr. Appell) Did you ever talk with Mr. Schob about a discussion concerning the union that took place between Mr. Cannon and Mr. Lynch? A. I may have, I don't recall.
- Q. Well, did Mr. Schob ever tell you that Cannon was trying to sign people up for the union, telling them what the union would do for them? A. Yes. Mr. Brandt approached him.
- Q. When was that? A. Again I have to beg off on the date. It was—I don't recall the date.
- Q. Didn't you ask Schob to have Lynch write up a statement? A. Yes, I did.
- Q. And when was that? [764] A. I don't recall the date, Mr. Appell.
- Q. And what was it that Schob told you that you asked Schob to have Lynch write up a statement? A. What had occurred in the elevator.
- Q. Which was what? A. According to the statement that he was talking to him about union, Mr. Cannon.
 - Q. How did Mr. Schob say he found that out? A. At my

request to find out what they were doing in the elevator without an elevator operator.

- Q. Did Mr. Lynch produce such a statement, do you know? A. Yes, he did.
 - Q. Did you ever see it? A. I did.
 - Q. What did you do with it? A. I filed it.

Mr. Appell: I call on counsel for Respondent to produce this statement attributed to Mr. Lynch.

Mr. Miller: I will refuse to further assist General Counsel in the presentation of his direct case unless ordered by you to do so.

Mr. Appell: I respectively request Your Honor that you direct Respondent to produce this statement.

Judge Cohn: Well, I will say that if you have this statement—if you, meaning the Respondent, have the [765] statement in your files, that it should be produced.

Mr. Miller: I have my exception and note again that Christopher Lynch was a witness subpoeaned by the General Counsel, had ample opportunity to get this, and I recall again the comments of how this case was put together in the first place and how the General Counsel is proceeding to put together this case.

The record will show I hand counsel a statement by Christopher Lynch.

Mr. Appell: May I ask that this paper be marked as General Counsel's Exhibit 14 for identification.

(The above referred to document was marked General Counsel's Exhibit 14 for identification, as of this date.)

Judge Cohn: Does it have a date on it?

Mr. Appell: It's dated June 26, 1973, Your Honor.

Q. (By Mr. Appell) Mr. Kaye, I show you General Counsel's Exhibit 14 for identification. Is this the statement that Mr. Schob produced as being Mr. Lynch's?

(Handing document to witness.)

A. Yes, this is it.

Mr. Appell: I offer General Counsel's Exhibit 14 into evidence, Your Honor.

Mr. Miller: No objection.

Judge Cohn: Hearing no objection, G.C. 14 will be [766] received.

(The above referred to document marked General Counsel's Exhibit No. 14 received into evidence, as of this date.)

Q. (By Mr. Appell) Mr. Kaye, can you explain why you asked Mr. Schob to get this statement from Mr. Lynch? A. Because we were having a union problem, and I wanted, if there was any problem with this, I wanted to be sure of getting on record with him.

Mr. Miller: I didn't get the question it was too fast, what was that question?

(Whereupon, the reporter read back the last question.)

Mr. Appell: Could I have the answer back.

(Whereupon, the reporter read back the last answer.)

Q. (By Mr. Appell) Did you complete your answer, Mr. Kaye? A. That's it.

Q. Did you ask him to get statements from any one else?A. Not to my knowledge, no.

Judge Cohn: You mean him, meaning Schob? Mr. Appell: Schob.

A. Kaye, for Respondent, Re-direct.

A. Well, yes, there may have been—who else was—no. Yes, he may have been, Storm, I believe it was, that gave a statement.

- Q. Did you instruct Mr. Schob to get such a written statement from Mr. Storm? [767] A. I asked him if Mr. Storm would willingly give me a statement.
- Q. And did such a statement come forth? A. I can't recollect again. Mayb

Mr. Appell: a counsel for Respondent to produce any such standard submitted on Mr. Storm's signature.

Mr. Miller: We intend to produce our direct case. We intend to have Mr. Storm a witness, provided he's not scared away.

[785] Q. (By Mr. Miller) I now show you General Counsel's Exhibit—it is marked 12, but it will be remarked 13 in accordance with Your Honor's instructions.

Judge Cohn: Wait, just a minute.

It was remarked from 11 and 12 to 12 and 13. This should be 14.

Mr. Miller: 14 is Lynch's statement. Judge Cohn: Right. That's G.C. 14.

Mr. Miller: That's G.C. 14, Lynch's statement and G.C. 13 should be Katz's warning to Brandt.

Judge Cohn: Right.

Mr. Miller: And Katz's warning to Brandt is still marked 12.

Judge Cohn: All right.

(The above referred to documents General Counsel's Exhibit 11 originally marked to General Counsel's Exhibit 12 and General Counsel's Exhibit 12 previously

marked to General Counsel's Exhibit 13 in evidence, as of this date.)

- Q. (By Mr. Miller) I now show you General Counsel's Exhibit 13. And signal me when you've seen it? A. Yes, sir.
- Q. You just testified that your normal form of warning is Respondent's 10.

Now, do—you were present when this G.C. 13 was written, were you not? [786] A. What date is that?

Q. Look again.

(Handing document to witness.)

- A. Yes, sir, I was.
- Q. Mr. Katz ask you for a form? A. I told him a form like that, we wouldn't have enough room to put all that writing on it.
- Q. What did he proceed to do? A. He proceeded to write it out on this yellow paper.
- Q. Do you know of any other warning in the year 1973 that was written this way? A. Could have been. It might have been, if it pertained to any lengthy type of thing, it might have been done.

[801] CHARLES HORD was called as a witness, having been first duly sworn by Judge Cohn, was examined and testified as follows:

Judge Cohn: Have a seat, please.
State your name and address for the record.

The Witness: Charles Hord, 61 Parkway Avenue, North Amityville, New York.

DIRECT EXAMINATION:

Q. (By Mr. Miller) Are you employed by J. W. Mays, Mr. Hord? A. Yes, sir, I am.

Q. In what capacity? A. I'm the display director in charge of the suburban [802] stores.

Q. Would you name the stores, please? A. Massapequa, Levittown, and Glen Oaks, Woodmere.

Judge Cohn: Is that the same store?

The Witness: Which one-

Judge Cohn: Glen Oaks and Woodmere?
The Witness: No. two different stores.

Judge Cohn: Four stores?

The Witness: Four suburban stores.

Judge Cohn: Thank you.

Q. Do you have anything to do with the Brooklyn store decorations? A. No, sir.

- Q. And the one on the 14th Street? A. Nothing.
- Q. And the one in Jamaica? A. No, sir.
- Q. Just the four you've mentioned? A. Right, sir.
- Q. Now, how long have you had this particular position, Mr. Hord? A. I would say it's close to three years, two or three years.
- Q. And before that, what were you? A. I was the assistant display director to Mr. Fred [803] Bueter, who was in charge of the Brooklyn stores and the Island stores.
 - Q. How would you spell that name? A. B-U-E-T-E-R.
- Q. Now, what are your duties as the display director of these four suburban stores? A. My duties are to setup displays, interiors, departmental displays, buy merchandise for the suburban stores, mannequins, and so forth, fall foliage, spring foliage, whatever entails a display.
- Q. Now, do you—where do you keep your office? A. In the Massapequa store I make my headquarters.
- Q. Do you travel around the other stores? A. Yes, sir, I do.

[816] Q. Now, can you tell us, if you know, the times that Miss Gribbins worked in Levittown in 1973? A. Well, I believe Miss Gribbins was there in March '73. I know she was there in June of '73 on more than one occasion.

Q. I see.

Now, when this June thing took place was Miss Gribbins transferred to Levittown? A. No, she was not.

Q. What was the purpose of her being assigned to [817] Levittown? A. Well, Miss Gribbins had been in Levittown, I believe it was the 6th or 7th of June or the early part of June she had gone there to do the boutique.

Now, I received a call later from Mr. Igloi, who was-

Q. Igloi— A. Igloi, who was the display manager in the Levittown store, and he said he was catching it from somebody in Brooklyn, he didn't name any one, so he asked if I would send Laura over there for awhile to help him.

So I agreed to do this. So I proceeded to consult Miss Gribbins about going to Levittown, and she became very upset about it and told me she didn't want to go.

- Q. Did you discuss with Miss Gribbins her becoming assistant display manager? A. Yes, I did.
- Q. Tell us about that, and when it happened? A. Well, I believe it was on the 19th of June, I think it was the 19th, Miss Cribbins, Paul Warwel and I were in the cafeteria—
- Q. Where? A. At the Massapequa store. I had spoken to Miss Gribbins on other occasions about the possibilities of her going to Levittown as the assistant store manager along [818] with Mr. Warwel, and that those two people could run the store because—
 - Q. What? A. Can run the display department.
- Q. Oh. A. Because the manager in the Levittown store was retiring and going to Florida.
- Q. When you say the manager, you mean the store manager or the display manager? A. The display manager.

- Q. You're talking display now? A. Absolutely.
- Q. I believe you said store? A. Display manager.
- Q. Now, his name again is? A. Charles Igloi.
- Q. I-G-L-O-I? A. I believe that's it.
- Q. What has happened to him? A. He has retired.
- O. Where is he now? A. He's in Florida.
- O. Please continue with that discussion?

You said you mentioned the possibility. Did you give her an offer? [819] A. I didn't give her an offer. I only spoke about a possibility of this taking place in some distant future.

- Q. I see. A. But no promises were made, if you do one thing or another. It's just that I felt she was capable, she was a nice trim, ner, and the two of them could handle the job.
 - O. When was this, now? A. It was in June.
 - Q. Was that the whole conversation? A. Absolutely.
 - Q. Now,-

Judge Cohn: What did she say about it?

The Witness: Well, she thought it was a nice idea or she agreed to it. She thought it would be very nice. Her only objection was she didn't want to go to Levittown.

Judge Cohn: Wasn't the job in Levittown?
The Witness: Yes, it was in Levittown.

- Q. (By Mr. Miller) Did the subject of unions come up? A. No, sir. It did come up in that meeting with Miss Gribbins. Miss Gribbins said to me, she says Charles you only want to get me out of here because of the union. And I said Laura, don't you ever mention union to me because I have no knowledge of any kind of union whatsoever, those were my words to her.
 - Q. Now, can you give us the date of this?

[820] Judge Cohn: He said June 19th.

Mr. Miller: Oh, June 19th.

[826] Excerpts of Stenographic Transcript of Hearing of January 9, 1974.

Hearing Officer: Let the record show again that there's no representative of the charging union present.

Mr. Miller: Forgive me, Your Honor, I would assume that Mr. Brandt was representative of the charging union.

Hearing Officer: Well, he didn't make any such appearance officially in the hearing. I didn't so conclude. There was some gentleman, who was he—

Mr. Appell: Mr. Lunger was representing Local 30 the first day.

Hearing Officer: The first day. That's the only representative that I know of. Mr. Brandt is just an alleged 8(A)(3) as far as the record shows.

All right. Proceed.

Mr. Miller: The record shows more than that. The record shows he was sitting at the table with Counsel. He was assisting and guiding. He just wasn't here as a spectator.

Hearing Officer: Well, there are many people that assist and advise Counsel, Mr. Miller, without my [827] concluding without more, that he represents the union. There's been nothing here in the record as far as I can tell, when I asked for appearances on behalf of the parties present, that Mr. Brandt represented the union.

Miss Gribbins is here. She is the Charging Party. And stands on her own footing.

Mr. Miller: I seem to be getting into these unfortunate differences with you and I don't mean to. I merely suggest to you, Judge Cohn, that Mr. Brandt was sitting at Counsel's table all this time and he was consulting with him.

And he was *_lking with him which makes him more than just a plain spectator or as you put it, just an alleged 8(a)3.

Hearing Officer: Mr. Miller, I don't want to get into colloquy with you. But I have held many hearings in which

many people have advised Counsel or both sides of the aisle that were not even witnesses at the hearing.

Mr. Miller: That's true.

Hearing Officer: So the fact that they sit at Counsel's table and advise Counsel does not in any view constitute them a party to the proceeding.

Mr. Miller: That's true. I do not consider that he is a party to this proceeding. That's true. I did not intend to imply that.

[828] Q. (By Mr. Miller) Mr. Hord, did-strike that.

When was the first time you learned that Miss Gribbins was connected in some way with the union? A. I believe it was the day that I had the discussion with Miss Gribbins in the cafeteria.

I believe that was on the 19th, the day that I was talking to her about going to Levittown.

Q. I see. Did you report that conversation to Mr. Kay? A. No, I did not.

[832] And at that point, Mr. Kaye explained to Laura that she was breaking company rules by having her purse on the floor and he questioned her about the merchandise that she had enclosed in her bag.

So she said that she had taken the body suit from [833] her home, that she had purchased it on Friday, I believe, and that she was going to wear it out that evening.

And that was her reasoning for having it in her bag.

Mr. Kaye again told Laura the procedures about having bags and merchandise brought in the store.

He asked her to sign a statement where as he was reprimanding her for doing this.

I believe at that point Mr. Kaye dismissed Laura, and sent her back out, because I think it was time for her to go home.

Q. Are you saying dismissed?

You mean he terminated her? A. No sir. He let her go from his office back to work.

Q. I show you Respondent's 3 in evidence and ask you if that is the paper to which you have reference?

(Mr. Miller handed a document to the witness.)

Q. A copy of it? A. Yes sir, it is.

Q. Now did that mark the end of your participation that day? A. For that particular day, yes.

[835] Q. Who is Lucille Tedeschi? A. Lucille Tedeschi is the second floor manager.

[837] Q. If you saw any of your personnel, just happen to see them dawdling, do you take steps? A. I most certainly do.

Q. Is this a new practice on your part? A. Not on my part. May I explain?

Q. Please. A. On more than one occasion I have seen my personnel on the floor talking, and I will by all means consult this person and ask them why are they standing around talking.

I have stated that you as an individual that works for me, what you do reflects on me and my job is to see that the job is done within the store.

And if you are talking, the job is not being done.

Q. What is your attitude toward the union in this case? [838] A. I have no attitude.

Q. Do you care one way or the other? A. No sir, I do not.

Q. Did you make that attitude known? A. Yes sir, I did.

- Q. To whom? A. To any one concerned.
- Q. Did you make it known to me? A. Yes sir, I did.

CROSS EXAMINATION

- Q. (By Mr. Appell) Mr. Hord, prior to testifying at this hearing, did you discuss your testimony with anyone? A. My testimony?
 - Q. Yes. A. Well, if you mean what I stated?
 - Q. That is correct. A. Portions, I would say.
 - Q. With whom? A. With my attorney.
 - Q. Is that Mr. Miller? A. Yes, it is.
 - Q. And with who else? A. That is it.
 - Q. Was anyone else present when you discussed it with [839] with Mr. Miller? A. Not to my knowledge, no.
 - Q. Mr. Katz was not present? A. Not when I spoke to Mr. Miller about the case, no.
 - Q. Did Mr. Katz ever talk to you about testifying in this proceeding? A. Mr. Katz might have said something about I would have to testify.
 - Q. And did Mr. Kaye talk to you about it? A. No, Mr. Katz talked to me about it.
 - Q. I see. Do you recall when that was? A. No sir, I do not.
 - Q. Do you remember how long that conversation was? A. No, I do not.
 - Q. Isn't it a fact that last week you and everyone—most every one else who was testifying in this case for the company met in the store office of Mr. Kaye last week? A. That is not true, sir. Not me, sir.
 - Q. Do you know if anyone else did? A. I have no idea what went on in Mr. Kaye's office.

[841] Q. Do you have the power to transfer employees from one store to another? A. Do I have the power to transfer?

Yes, I do.

- Q. Do you have to check with anyone before you do that? A. Yes, I do.
 - Q. Who is that? A. That would be Mr. Katz.
- Q. He gives you the final okay to do it? A. To transfer, not to take out.

Now, may I speak sir?

- Q. Surely. A. Are you asking me do I have the power to transfer an individual permanently or do I have the power to take an individual out of a store on a temporary basis?
- Q. Well, describe what happens in each circumstance. A. All right. Now, if I should take someone and transfer them, that means that the whole transcript, the whole records would have to be transferred to another store.

Now, I do not believe I have the power to do that, [842] unless I would consult with my superior, who is Mr. Katz.

But if I wanted to take one of my display people and move them from one store to another, that is within my jurisdiction to do so.

- Q. Well, have you ever moved an employee from one store to another temporarily, but where someone else asked you to do that rather than it being on your own initiative? A. Yes, I have.
- Q. And who has asked you to do that? A. All right. I can give you an example. In the Levittown store I have taken a man out of the Levittown store and I have sent him to the Glen Oaks store to do various things on occasions.

I have taken men from the Brooklyn store and brought them in to the Massapequa store to do various things.

Q. What I am asking you is, when you have done this on the authority of someone else, where someone else has stated

that you should do this, who has it been that has asked you to do this? A. It could be the display manager in that particular store or it could be the store manager in that particular store.

- Q. Has Mr. Kaye ever asked you to do that? A. Has Mr. Kaye ever asked me to do that?
 - Q. Yes. [843] A. Yes, Mr. Kaye has asked me to do that.
- Q. Has Mr. Katz ever asked you to do that? A. Yes, Mr. Katz has asked me to do that.
- Q. All right. Most of these times when they are temporary, they are usually just for one or two days at a time, isn't that correct? A. No, it is not correct, sir.
- Q. Do you have the power to discharge employees? A. Yes, I do.
- Q. Do you have to seek approval before you do that? A. Do you have to see what, sir?
 - Q. Seek approval. A. No, I do not.
- Q. You can do that without telling anyone? A. By my own discretion.
 - Q. Same thing for hiring? A. Yes.
- Q. Did you ever recommend that Laura Gribbins be discharged? A. No, I did not.
- Q. In your personal dealings with her in the store, did you always find her to be an honest person? A. I found her to be honest, yes.
- [860] Q. Well, on one occasion in '73 she went as a personal favor to you, didn't she? A. Mr. Appell, Laura is an employee, and whether she figured it was a favor or not, she had a job to perform [861] and I asked her to do the job, and that is what was done, Mr. Appell.
- Q. Was that a one day job? A. I do not remember whether it was one or two day job.
- Q. Was it more than two days? A. It could have been, Mr. Appell.

Q. How long was it? A. At this point I do not remember. I can not remember the exact month or date, so I can not remember how long it was.

Q. It was not a week, was it? A. Mr. Appell I will state again I do not recall how long it was.

Q. When was the first time you ever offered her an assistant display manager's job?

Mr. Miller: Objection. There is never such testimony.

I have been listening to these sort of questions from a government agent and I am appalled.

There was no such testimony.

The government does not have to win a case this badly.

Hearing Officer: All right.

I do not recall whether you made any such testimony.

Did you, Mr. Hord?

Did you ever offer her any assistant-

[862] The Witness: I did not offer it, sir.

In my testimony I stated that I had a conversation with Miss Gribbins on the 19th of June—

Hearing Officer: I recall now, in which you said that might work out or something like that.

The Witness: Exactly. Exactly.

I never offered it.

Hearing Officer: Go ahead.

Q. (By Mr. Appell) What did you say to Laura Gribbins with respect to the assistant display manager's job? A. I said to Miss Gribbins—

Mr. Miller: Objection.

I want to put my objection to this type of cross

examination where he simply asks him to repeat what he said on direct.

Hearing Officer: Overruled.

A. I said to Miss Gribbins that it was possible when she went to Levittown at a later date when Mr. Igloi retired that maybe she and Mr. Warwell could run the store together, meaning the display department.

Q. Prior to that time, Mr. Hord, did you ever discuss the possibility of Laura Gribbins being an assistant display manager with Laura Gribbins? A. No, I did not, Mr. Appell.

[863] Q. The first time you mentioned assistant display manager job to Laura Gribbins was in June, is that correct?

A. I do not know whether that is so or not, Mr. Appell.

i will frankly say to you that I was quite fond of Miss Gribbins' work and I was the one that recommended her [864] in the beginning for the transfer—not transfer—for the store jobs to travel from one store to another.

So I constantly complimented Miss Gribbins as to her work.

So I may have mentioned it many months before June.

- Q. But the conversation that you have testified to took place on or about June 19th, is that correct? A. Absolutely, sir.
- Q. Okay. And you did have knowledge at that time that the union was—that Local 30 and 307 were organizing at Mays, didn't you? A. No sir, I did not.
- Q. When was the first time you learned that? A. That the union was organizing?
 - Q. Yes. A. I do not recall ever knowing.

I have heard it, but I do not recall the date that I knew that the union was trying to organize.

- Q. When did you first hear it? A. Mr. Appell, that is a difficult statement. I can not answer that question.
- Q. Was it before you had the June 19th conversation with Miss Gribbins? A. I am sure it was not before that because—
- Q. Was not? [865] A. It was not before that and I can tell you why if you would like to know.

Hearing Officer: Well, I would like to know whether he would or not.

The Witness: Well, the first time 1 ever heard the union mentioned was mentioned by Miss Gribbins on June 18th in the cafeteria.

She stated to me, Charles you only want to send me to Levittown because you know the union is coming in.

And I said Miss Gribbins, I said Laura, don't you dare mention union to me because I do not want to hear anything about it.

That is the first time it was mentioned to me, sir.

Hearing Officer: Well, whether or not it was the first time it was mentioned to you in so many words, that is the word union, the question counsel would like to know, I think, is whether or not you were aware of union activity going on at the store prior to that time.

The Witness: No, I did not.

Hearing Officer: Next question.

Q. You were not aware, Mr. Hord, that there had been a hearing at the National Labor Relations Board concerning certain employees and the unions?

Mr. Miller: Objection. I wish you would state what hearing. Stop trying to confuse the witness.

[866] Mr. Appell: Your Honor, I must object to these characterizations.

I have been sitting here for two weeks and hearing

all sorts of characterizations about counsel for general counsel and I deeply resent them.

Mr. Miller: I can not help it.

Mr. Appell: I am trying to cross examine this witness.

I am not trying to confuse anyone and I beg to draw the distinction between a witness's credibility being impeached and he is being deliberately confused by counsel and I resent these statements, Your Honor.

I wish that on the record.

I think they are unprofessional.

Mr. Miller: I would like to answer that.

I have made the statement, I repeat the statement.

I repeat the statement when some one says tell me the story all over again and then looks for a little distinction in 15 minutes or 20 minutes, that is not my idea of cross examination.

I repeat the statement here, and for now he knows there were two hearings.

He is not talking to a lawyer.

Hearing Officer: All right.

I do not think that it is improper to ask a witness on cross examination to repeat the story that he told on [8:17] direct examination.

I have been hearing that for many years as I have been an attorney and an administrative law judge, and I really never heard of any objection based on that contention.

But—and I think I know the difference between asking a question that is designed to confuse a witness and one that is not.

I do not consider the question that counsel posed as being one designed to mislead.

This witness has impressed me as being capable of answering questions, and I will allow him to answer that question.

The question is—would you repeat it, please?

Mr. Appell: Could the reporter read it back please, Your Honor.

(The question was read back.)

A. Now, you talk about when?

Are you talking about June again?

Q. I am talking about at the time that you had your conversation with Laura Gribbins on June 19th. A. I do not recall hearing anything about the union.

Hearing Officer: The question is whether or not you recall hearing anything about some hearings involving the union among employees of the store before the National Labor Relations Board prior to that time.

[868] A. I could have, Mr. Appell. I will answer it that way because I do not know. I could have.

Q. Well, did there come a time when Mr. Kaye or any other of your superiors ever asked you what you had heard about any union organizing drive? A. No, sir.

Q. They never asked you to report or to tell you about what you had heard? A. No, sir.

[869] Q. Now, when you discussed the possibility of her becoming an assistant display manager, did you indicate whether this was for all stores or just for Levittown or [870] just for Massapequa or what? A. I had mentioned it in reference to Levittown as I stated.

Q. Well, was this related—was this possibility related in any way to her now being sent over to Levittown? A. No, it was not. As I had told you, I had mentioned it sometime before.

Q. In other words, she was not being sent to Levittown, among other reasons, to see whether she could become an assistant manager then? A. No, she was not.

[887] RE-DIRECT EXAMINATION:

Q. (By Mr. Miller)

[889] Mr. Miller: There have been various terminology. I just wanted to make sure we are talking about two different stock areas in different parts of the store.

Hearing Officer: All right.

- Q. Now, did you—do you remember testifying in an NLRB hearing in the year 1973? A. Yes, I do.
- Q. Do you remember what day it was, what date? A. I believe it was July the 23rd.
- Q. Well, on that date, did you know that there was a union organizing campaign on the day you testified? A. Yes, I guess I would have to know.
- Q. Before that July 23rd date did you speak to me? A. Yes, sir.
- Q. Do you know when you spoke to me? A. I believe it was in Massapequa.
 - O. I know.

Hearing Officer: The question was when.

- Q. Not where, when. [890] A. Offhand I don't remember, Mr. Miller.
 - Q. Well, was it before July 23rd? A. Yes, it was.
- Q. Would you be able to guess how long before? A. Maybe a week before.
 - Q. Did we discuss the union at that time? A. Yes, sir.

C. Hord, for Respondent, Re-direct,

Mr. Appell: Objection.

Hearing Officer: Overruled. He has answered.

Q. All right. Now, before you spoke to me had you discussed the union with anybody? A. No, sir.

[891] Q. Did Mr. Katz play any role in the assignment of Miss Gribbins to Levittown in June of 1973? A. No, he did not.

Q. Did Mr. Kaye play any role? A. No, he did not.

Q. And you assigned her on your own? A. Yes, sir, I did.

[895] Mr. Miller: At this point, sir, I would like to have Counsel for the General Counsel stipulate, if he would, that Paul Warwel was subpoenaed and was not called on his direct case, on General Counsel's direct case.

Mr. Appell: I will state for the record, Your Honor, that Mr. Warwel was subpoenaed, and I thought that he might be required and it was ultimately decided that he would not be called on the General Counsel's case.

Hearing Officer: You said you agreed that Mr. Warwel was—

Mr. Appell: Was subpoenaed, I am not sure of the relevancy, but I will state for the record that he was subpoenaed and then I made a decision not to call him.

Mr. Miller: May we have the same concession with respect to Roundabush?

Mr. Appell: Without stipulation, a concession of [896] any kind, Your Honor, I would stipulate that we had subpoenaed Mr. Roundabush and I also decided not to call him.

Hearing Officer: Who is Roundabush? I think I have heard the name.

Mr. Miller: Roundabush was a maintenance helper who was a participant in several incidents discussed by Mr. Brandt along with—

Hearing Officer: I remember the name vaguely. All right, go ahead.

MARGARET ROUSSEAU, a witness, called by and on behalf of the Employer, having been duly sworn, testified as follows:

Direct Examination:

- Q. (By Mr. Miller) Miss Rousseau, are you employed by J.W. Mays? A. Yes, I am.
- [897] Q. In what capacity are you employed? A. Store detective.
 - Q. Is that also known as a 38? A. 38.
- Q. How long have you been a 38? A. Four years and four months.
 - Q. At the Massapequa store? A. Right.
 - Q. Now, who was your superior? A. Marie Eckert.
- Q. Is she here in the hearing room? A. Yes, she is. She is sitting on the bench—chair.
- [898] Q. Did you see—were you here at the time of the first hearing in this particular proceeding? A. Yes, I was.
 - Q. Did you recognize Evelyn Upton? A. At that time I

knew she once worked for Mays. I saw her in Mays. I never knew her name.

- Q. Well, did you watch that lady in April? [899] A. No, I did not.
- Q. Did you watch that lady at all? A. I might have walked past her when we passed in the aisle but I never watched her.
- Q. I am talking about keeping her under surveillance? A. No.
- Q. Now, did you watch Miss Gribbins in April? A. No, I did not.
- Q. Until August 20th, 1973 did you keep any—did you keep surveillance of Miss Gribbins? A. No.
 - Q. Did you get any orders to? A. No, I did not.
- Q. When was the first time you learned of any union connection between Miss Gribbins—well, any connection between Miss Gribbins and a union? A. About the middle of—the end of November, the beginning of December.
 - Q. How did you learn? A. You—through—you told me.

[900] Q. Now, did you observe Miss Gribbins on August 20th? A. Yes, I did.

Q. Now, would you tell us when you first observed Miss Gribbins where you were and where she was? A. It was in the morning on Monday morning, the 20th of August, I was in the millinery area department, which is right next to the blouse department.

And I noticed Laura, she picked up two body suits, a maroon one and green one, and she walked out of the department with it.

And I—she didn't seem to sign the book, the display book, which I knew all display personnel were supposed to sign, any merchandise from the department.

And I saw her go into the back stock area, display area in the sportswear department, across the floor, and meanwhile I had just—I was in the blouse department and I checked the book to see if it was signed, it's possible she could have signed for it but there was no [901] signature for that merchandise, any merchandise.

[912] Q. Now, when was the next time you saw Miss Gribbins? A. She came off the escalator and she was walking towards the check room.

Q. Who was with you when you saw her, if anybody? A. Marie Eckert.

Q. What did you do? A. Weil, Marie and I were checking the books, and the other 38, Kenny, came running down the stairs and said Laura was in the back stock area with her handbag.

So—this is unusual, that's why he ran down—that's why he came running.

Q. Excuse me, Kenny, what is his full name? A. Kenneth Rau, R-a-u.

Q. Is he still employed by Mays? A. No. He went for another job.

Q. Well, all right. He came down. You say he was a 38? A. Yes.

Q. Then when you received this news, what did you and Marie do? A. Marie called Mr. Kaye and she said Laura just [913] came—was on the floor with her handbag, I am going to check her handbag.

And he said by all means do so, that's in violation of company rules. So Laura went back to the—at this point was back at the check room.

And we went back there. And Marie had said Laura, you were on the floor with your handbag, which is not permitted,

would you please open—I will have to check your handbag, would you please open it?

Laura opened the handbag and a green bodysuit, blouse bodysuit, was in her handbag in a plastic bag.

Q. Was that a Mays plastic bag? A. No.

Q. What kind of a plastic bag was it? A. A clear plastic bag. Later on Laura said she had got it from home.

Q. You recognize it as not being a Mays bag? A. No, it was just a clear plastic bag with no writing on it.

Q. What happened then? A. Marie Eckert said I am sorry Laura, you will have to go with me to Mr. Kaye's office. So she was bringing Laura up to Mr. Kaye's office.

[914] Q. Now, were you present when a warning was given to Miss Gribbins? A. Yes. Mr. Kaye had said to Laura, first of all, what [915] are you doing with your handbag on the floor?

She said I was nervous, I was afraid I was going to leave, I wanted to get a cup of coffee, but then she decided not to go out or something.

Then she had—Mr. Kaye asked her what are you doing with the blouse in your pocketbook.

And she said she was going out that night, she brought it from home. And he asked her if she brought the plastic bag from home and she said yes. She had brought the blouse the week before.

Mr. Kaye said did you get your discounts and she said no, I don't need them. And he said I am going to give you a warning, Laura, a written warning.

And I am going to put it in your folder. And she says okay. And then I believe she signed it. And then I left the room.

Q. Well, do you recall—do you recall that you were present when she signed it? A. Right.

M. Rousseau, for Respondent, Cross.

[917] Q. Excuse me for interrupting, I am sorry, when you had left Mr. Kaye's office, you said Miss Gribbins had signed a warning? Had she been dismissed? A. No. He said I am not going to dismiss you, because I am just giving you a warning, a fair warning and she said okay.

[921] CROSS EXAMINATION:

Q. (By Mr. Appell) * * *

[927] Q. When did you first learn that the unions were trying to organize at Mays? A. I never had any true knowledge of this until this case came about.

Q. Well, when was that? A. The end of November, beginning of December.

Q. You never heard anything about a union before that, is that your testimony? A. That's correct.

[937] Q. Did you make any written record of any of the things you have testified to here today? [938] A. Well, a couple of weeks later I made a little—I just wrote the details of what happened and I gave them to Mr. Miller. It was just basic facts.

Q. Do you know where that is now? A. No, I don't because—I don't even think it's in existence now because when we—when I was going over the case with Mr. Miller he had my paper, I gave it to him, and he was scribbling on it, and I think he threw it away.

Mr. Appell: I call upon Counsel for Respondent to produce that record if it's available.

Mr. Miller: You are calling upon me to reduce my work product?

Hearing Officer: That's not a work product. That's

M. Rousseau, for Respondent, Cross.

a statement or writing or some sort of thing that the witness testified that she gave.

Mr. Miller: I don't have it but I will be very happy to give you our synthesis of all our investigation.

Hearing Officer: That remark is not called for. I asked you—I am aware of what a work product is, and I don't consider that something that a witness wrote out and gave to you your work product.

Mr. Miller: If I doodle on it or ask questions and make my comments on each one, sir, I believe it is.

Hearing Officer: We may disagree about that, but I think your other remark was uncalled for. Do you have [939] that statement or don't you?

Mr. Miller: No, I don't.

Hearing Officer: Next question.

Mr. Appell: I think it may be very significant in cross examinating this witness.

Hearing Officer: Mr. Miller said that he did not have any such statement or whatever you want to—

Mr. Appell: Could I get for the record, Your Honor, as a statement as to whether that is still in existence or merely not available at this time, that it might be produced?

Hearing Officer: I gathered from what Mr. Miller said that it did not exist. If you want to clarify that, Mr. Miller, you may.

Mr. Miller: May I have a minute to contain myself, please. Can we go off the record, please?

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Miller: I do not have all the Mays files with me. I do not believe the original piece of paper given me at my request by Miss Rousseau and Mrs. Eckert is

M. Rousseau, for Respondent, Cross.

around, but I have no independent recollection at this moment that I physically destroyed it.

I therefore am unable to swear or to affirm to you [940] that it is not present. I think it's not here, but I cannot say that I recollect actually disposing of it, so I will go back to my office at the close of these hearings and will look for it.

And then I will inform you that it's here, and then I will await your further instructions and then risk your displeasure if I refuse to turn it over.

Hearing Officer: My displeasure, if I have indicated any, was not that you were attempting to withhold anything.

It was merely that you were attempting to characterize that as your work product, and made some remark that you aren't required to divulge your work product and I quite agree with you that you are not.

I just did not consider that your work product. But whatever, if you don't have it here now--

Mr. Miller: No, I don't have it here. I cannot swear to you on my honor as an attorney, tell you that I actually recollect right now taking and throwing it in the basket.

Hearing Officer: It it turns up during the course of the hearing, would you let me know?

Mr. Miller: Yes, sir, I will.

Hearing Officer: And this witness would be available. Proceed with your interrogation.

[951] Q. Mr. Rau is no longer working for Mays, is that correct? A. That's correct.

Q. Was he fired? A. No. He resigned.

M. Rousseau, for Respondent, Re-direct. M. Eckert, for Respondent, Direct.

Q. Was he asked to resign, do you know? A. No. He said he went to get another job, he had another job lined up.

[959] RE-DIRECT EXAMINATION:

- Q. (By Mr. Miller) * * *
- Q. Do you know how many departments there are in Mays? A. Quite a few.
 - Q. Do you know how many? A. 60,70.

[971] MARIE ECKERT, a witness, called by and on behalf of the Employer, having been first duly sworn in, testified as follows:

Direct Examination:

- Q. (By Mr. Miller) Mrs. Eckert, was your name Fine before it became Eckert? A. Yes, it was.
 - Q. Are you employed by J.W. Mays? [972] A. Yes.
 - Q. And what is your job? A. Store detective, head.
 - Q. In what store? A. Massapequa.
- Q. How long have you had that job? A. Ten years and eight months.
- Q. Now, do you know an Evelyn Upton? A. I have seen her in the store, yes.
- Q. Did you—were you present when she testified at a previous occasion in the course of this hearing? A. In here, yes, I was.
 - Q. Did you recognize her? A. Yes, I did.
 - Q. Did you follow Mrs. Upton in April? A. No.
- Q. Did you cause her to be under surveillance at any time? A. No.

M. Eckert, for Respondent, Direct.

[973] Q. Do you know Laura Gribbins? A. Yes, I do.

Q. When did-

Mr. Miller: May I have your indulgence just one moment?

Hearing Officer: Certainly.

Mr. Miller: Could you read me the question I asked?

(The question referred to me was read back.)

Q. When did you learn that there was a some union connection that Laura Gribbins had, could you tell us? A. Well, when I first spoke to you.

Q. Well, could you fix the date? A. That was sometime, I believe it was the end of November, beginning of December.

I am not sure.

Q. Let's get this over with.

Did you give me a piece of paper? A. Yes, I did.

Q. Did I ask you questions? A. Yes.

Q. Did you see me write on this piece of paper? A. Yes, I did.

Mr. Miller: I put this in the record, your Honor, [974] so make a disclosure to you that there is a similar thing that happened as regards Miss Rousseau, same thing happened with Mrs. Eckert, and the same circumstances and the same answers as to both, the same position is taken with respect to both.

Hearing Officer: Well, understand, in regard to that, that I am not making a ruling at this particular point as to whether or not what this paper is constitutes a statement or whether or not it constitutes a work product or not.

It may very well be a mixture, I do not know, but I can not make a determination of that until I see the paper.

M. Eckert, for Respondent, Direct.

Mr. Miller: That is true.

But on the other hand we were asked to produce it, and to the extent that I indicated the possibility, in my mind, the probability of a prior disposition, when I said about Miss Rousseau would apply with equal validity to the one that Mrs. Eckert gave.

Hearing Officer: All right.

Mr. Miller: And I want to make sure that was on the record so I disclose that to you.

Q. Now, by this time you know of the incident affecting Miss Gribbins in August 1973?

Miss Gribbins is—'[975] A. Yes.

Mr. Miller: I would like to get to—with your permission—to the point.

Q. When is the first time you heard about some incident involving Miss Gribbins in August of 1973? A. Margaret had called me and told me that she had seen Laura going into the back store area with two blouses and something about a ripped ticket, and a pants suit.

[979] Q. Well, now, look, anyhow he told—he told you to bring her upstairs and did you bring her upstairs? A. Yes, I did. I brought her to Mr. Kaye's office, and Mr. Kaye asked her what the blouse was doing in her bag and she told him she brought it from home, and that she was going out that night.

And he said well, you know, you were on the floor with your bag, that's against the company rules, and he said do you have a receipt for this blouse.

And she said no. He said, well, don't you get your discounts? And she said no, I don't.

M. Eckert, for Respondent, Direct.

So then Mr. Kaye said that he was going to give her a reprimand for this, and—

Q. Then did you—strike that. What happened at that point? A. Well, he gave her a reprimand for it, and she signed it. And then she left the office. He told her to go back out on the floor.

[980] Hearing Officer: Well, after Miss Gribbins signed the warning slip, you said you saw her sign?

A. Right.

Hearing Officer: And then she went on back to work?

The Witness: That's right.

Hearing Officer: And you stayed in the office with [981] Mr. Kaye?

A. No, I went out on the floor.

Hearing Officer: Well, when did Mr. Kaye make this statement that Counsel asked you about?

The Witness: Well, he made it, I guess, while I was sitting in the office with Laura. I don't remember what he said about it.

He said something about—I really don't remember. Hearing Officer: Well, if you don't remember then you don't remember.

The Witness: No, I really don't remember. It was so many—so long ago, that I am just—

Q. Well, just tell us the best you can. But in any event, you did not give up the search for the pants suit, did you? A. No. B are we had the ripped ticket.

M. Eckert, for Respondent, Re-direct. L. Tedeschi, for Respondent, Direct.

[997] RE-DIRECT EXAMINATION:

- Q. (By Mr. Miller) Kenneth Rau, was he a 38? A. Yes, he was.
 - Q. And is he working now at Mays? A. No, he is not.
- Q. What happened to him? [998] A. He left for another job.

[1003] Mr. Miller: I call Lucille Tedeschi.

Hearing Officer: Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

The Witness: I do.

[1004] Hearing Officer: Have a seat, please.

Would you give your name and address to the reporter and spell your name, please?

The Witness: Lucille Tedeschi. That is T-e-d-e-s-c-h-i, 15 Saltaire Road, S-a-l-t-a-i-r-e, Road East, Lindenhurst, 11757.

Whereupon,

LUCILLE TEDESCHI, a witness, called by and on behalf of the Employer, having been first duly sworn, testified as follows:

Direct Examination:

- Q. (By Mr. Miller) Is that Miss or Mrs.? A. Mrs.
- Q. Mrs. Tedeschi, are you employed by J. W. Mays? A. Yes, I am.
 - Q. What store? A. Massapequa.
 - Q. What job? A. Second floor manager.

L. Tedeschi, for Respondent, Direct.

Q. How long have you been the second floor manager? A. It will be ten years October 4th.

Q. What departments do you have on your floor? A. I have thirteen departments.

Q. All right.

A. Approximately. I think it is thirteen.

[1005] Q. Are pant suits sold on your floor? A. Ladies,

ves. Ladies pants suits.

Q. Do you recall the events of August 20th, 1973, with respect to a pants suit question that came up? A. I do not remember the date, but I remember the incident.

[1007] Q. What are your duties as manager of the second floor? A. Well, I run the entire floor, the schedule, seeing that there is proper coverage on the floor, see that the girls are dressed right and everybody comes to work promptly and that everything runs smoothly.

Q. Are the employees allowed to talk on the job? A. Yes,

occasionally.

[1008] Q. Are they allowed to stop work and do private business? A. No.

Mr. Miller: I think the is all for Mrs. Tedeschi.

[1014] Mr. Miller: I call now Veronica Turner.

Hearing Officer: Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

The Witness: I do.

Hearing Officer: Have a seat, please.

V. Turner, for Respondent, Direct.

Will you state your name and address for the reporter?

The Witness: Veronica Turner, 76 Pittsburgh Avenue, Massapequa.

Whereupon,

VERONICA TURNER, a witness, called by and on behalf of the Employer, having first been duly sworn, testified as follows:

Direct Examination:

- Q. (By Mr. Miller) Spell your last name? A. T-u-r-n-e-r. Hearing Officer: Will you speak out so we can all hear you, please?
- Q. Miss or Mrs.? A. Mrs.
- Q. Mrs. Turner, would you—are you employed by [1015] J. W. Mays? A. Yes, sir.
 - Q. In what capacity are you employed? A. Sales Lady.
- Q. In what department? A. 34 Junior. Dress Department, Junior Department.
 - Q. Okay. That is Junior Dresses? A. Junior Dresses.
- Q. Now how long have you been employed? A. It will be four years in March.
 - Q. That has always been at Massapequa? A. That is right.

Mr. Miller: Again with your permission, your Honor, skipping right to the—

Hearing Officer: Yes, six.

[1018] Q. Are you permitted to do your private work while you are on duty? A. Private work?

Q. Yes. Personal. [1019] A. I really do not understand what you mean.

Q. Are you allowed to stop work and do things for your own benefit that have nothing to do with the store? A. No.

[1036] Mr. Miller: I call Mr. Maquire.

Hearing Officer: Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

The Witness: I do.

Hearing Officer: Have a seat, please. Give your name and address to the reporter.

[1037] The Witness: My name is John Maquire, Maquire, Box 42, Massapequa Park, 11762.

DIRECT EXAMINATION:

Q. (By Mr. Miller) Mr. Maquire, are you employed by J. W. Mays? A. I am.

Q. In what capacity? A. Uniform security guard.

Q. What store? A. Massapequa.

Q. What is your title? A. Captain.

Q. How long have you been a captain? A. Three years and four months.

Q. Do you know Evelyn Upton? A. I do.

Q. How did you get to know her? A. Well, just through dealing with her, from R. T. V. room.

O. R. T. V. means what? A. Return to vendor.

[1038] Q. And your contacts with her, were they social? A. Oh, no, strictly business.

- Q. How long do you know her—did you know her? A. Well, I don't know how long she is working there. I would say roughly about three years.
- Q. Did you ever have conversations with her about the time clock? A. Just tell her in the morning there, I have ten fur coats or rack of dresses or a few cartons going out from a few departments.

By notifying her at the time clock, I won't have to call her up later on in the R. T. V. room.

- Q. Did you have a discussion with Evelyn Upton concerning the maintenance helpers or the maintenance housekeepers? A. Maintenance housekeepers, no, sir.
- Q. What about the maintenance helpers, did you discuss that with her? [1039] A. No, sir.
- Q. Now, what are your hours? A. 4:45 a.m. to 13 hundred.
 - Q. That's one p.m.? A. One p.m.
- Q. One p.m. you go home and you come back at a quarter to five in the morning? A. That's right.
 - Q. Do you know Laura Gribbins? A. I do.
 - Q. Did you escort her- A. No, sir, I did not.
- Q. Now, were you informed of Miss Gribbins' termination? [1040] A. I was not.
- Q. Did you discuss the union with Mrs. Upton? A. Definitely not.
- Q. Did you get orders to keep Miss Gribbins under surveillance? A. No, sir.
- Q. What about Mrs. Upton? A. No, sir. It would be very hard to keep them under surveillance with a uniform on.
- Q. In any event, your answer is you did not give such orders? A. No, sir.

- Q. Are you a union member? A. No, sir. Retired, a retired union member.
 - Q. Were you a union member? A. Yes, sir.
- Q. What union? A. I was in the Brotherhood of Railway Clerks, International Brotherhood of Teamsters, Steam Fitters and that's it.
- Q. And what union did you retire from? A. The Brotherhood of Railway Clerks.
- Q. And are you making any sort of payments—A. Yes. I have to make a payment to keep my death benefits in force. [1041] Q. Do you know a Bernard Murphy? A. I know the name Murphy but his first name, I always called him Red, if that's the fellow you are talking about.
 - Q. What was he? A. He was a maintenance housekeeper.
- Q. Now, did you talk to him about entry into a door— A. Yes. He came in through the receiving department door, which he is not permitted to do and to pick up his check on a payday.

And I went out to the guard and I reprimanded the guard for allowing him to come in through that entrance against the company rules and the guard got sort of surly with me.

And I put a notation in his folder.

Hearing Officer: You say the guard did?

The Witness: Yes, sir. They have a guard on the platform.

Hearing Officer: Whose folder did you put-

The Witness: In the guard's folder, who was a little bit insolent towards me.

Hearing Officer: I see.

Q. Did you tell this to Murphy? A. I did not. I shouldn't tell Murphy my business. The only thing I told Murphy was he had no business coming [1042] in through that entrance.

[1043] A. Yes. As far as the date, I don't recall the date. But I can tell you the incident and the time it happened. It was around a quarter to seven this morning and he come and clocked in.

And less than five minutes later I got a call from A. T. D., that's the American District Telegraph, who services our alarm system, telling me that somebody had [1044] crossed through the jewelry section on the main floor. And they asked me—

- Q. I am sorry to interrupt you. Are you saying that there is a sort of a ray? A. Yes, a sonic ray. It's concealed. It's not concealed. But unless you know where it is, you just don't know where it is.
- Q. I see. A. So I get called by A. D. T. and told that somebody had crossed into that area. I locked my employees' entrance door, went up to escalator towards the jewelry department.

And I saw this Mr. Brandt in the cosmetics area, his back was towards me, but he was on the far end in cosmetics.

And going in there he tripped the alarm system. I walked up behind him and I tapped him on the back and he turned around and he near fainted.

I asked him what he is doing in that area. He says he is looking around. I says if you are going to make a purchase, I told him, if he wanted to make a purchase, there wouldn't be any cashier to take the money for it.

I told him to get the hell out of that area and don't let me catch him in there again.

[1045] Mr. Appell: Your Honor, if this testimony is not deemed part of Respondent's defense, I move to strike it.

Hearing Officer: I don't know what it's leading up to, Mr. Appell. I assume it has something to do with the defense or he won't ask him about it.

I don't recall any specific item in your case frankly, it goes to, but—

Mr. Miller: I was about to ask a question which I hope will induce you to feel that it's relevant.

- Q. Did you have any other contact with Brandt? A. That's the only contact with Brandt.
- Q. Did you keep a watch on Brandt? A. Yes. From that time on, I did. As best I could without being noticed by him.
- Q. Now, did you see him do anything again? A. No, sir, no.
- Q. Did you have occasion then to make a report about him? A. Well, I told my boss about it.
 - O. About the jewelry incident? A. That's right, yes.
- Q. When was that? A. A day after it happened or it could have been the same day if he came in.
 - O. Your boss is who? [1046] A. Mr. Malloy.
- Q. And what did Mr. Malloy tell you? A. He just told me keep an eye on him in the future, as long as he didn't take anything there was not much he could do.
 - Q. Did he take anything? A. No, sir.
- Q. Did you have occasion to make any other kind of report then? A. No.

Hearing Officer: Did you state when this occurred? The Witness: I don't keep dates because this wasn't leading into anything that I knew at the time. It was an everyday occurrence.

You see something happened and you nip it right in the bud and I just forgot.

Hearing Officer: The record here indicates that Mr. Brandt was terminated from the employment of this company on or about June the 13, so I assume that it happened sometime before that?

The Witness: I don't recall no date, no, sir.

Hearing Officer: You don't know whether or not that was a week before that or a month?

The Witness: No, I do not.

Hearing Officer: Do you know what year it was? [1047] The Witness: I know it won't be a year because he wasn't there that long. He came sometime in '73, that's about all I am sure of.

Hearing Officer: Sometime between the time he came and June.

The Witness: And June, that's right. It could have been the day before for all I know because this was going on and going along before I ever found out.

This business about Brandt with union and Laura Gribbins and Evelyn Upton, I knew nothing about that, until December.

That's the first inkling I had.

Hearing Officer: Just try to pay attention to what the question is I am asking, Mr. Maquire.

All I am asking is when did this occur with Mr. Brandt, relative to when he was discharged?

The Witness: It would have to be before he was discharged.

Hearing Officer: Yes, sir. Now I am asking you how long before.

The Witness: Oh, I couldn't be specific on that. It could be a week; it might be two weeks.

Hearing Officer: But you think it was within that time?

The Witness: As I say, I can't be too specific [1048] because I am apt to say the wrong time and somebody else will have some other ideas on it.

I passed it off as something that could happen anytime. You see somebody in the department looking around, so you just keep an eye on them.

Hearing Officer: Any further questions? Mr. Miller: Me, no.

[1050] Q. Now, I believe you testified you learned about this business, I assume you meant union business, sometime in December.

Who told you? A. Mr. Kaye.

[1051] Q. (By Mr. Appell) What did Mr. Kaye tell you? A. He told me my name was mentioned at some of these hearings. What, he did not divulge.

Q. Had you known about this hearing before it started? A. No, sir; I did not.

HARRY A. SCHOB was called as a witness and, having been first duly sworn, testified as follows:

[1052] Hearing Officer: Have a seat.
Give your name and address to the reporter.
The Witness: Harry A. Schob, S-c-h-o-b; 219
North Beech Street, Massapequa.

Direct Examination:

- Q. (By Mr. Miller) Are you employed by J. W. Mays? A. Yes, I am.
- Q. In what capacity? A. Maintenance housekeeper manager.
 - Q. What store? A. Massapequa.

- Q. (By Mr. Miller) How long have you had that job? A. A little over two years.
- Q. Were you employed by Mays before that? A. No, I was not.
 - Q. I see.

Now, what are your duties? A. I have a number of men underneath me, in which they work under me to clean the store inside and out, mop floors and pick up garbage and so forth. [1053] Q. Do your people do any work outside the store? A. Yes, they do.

- Q. What sort of work is that? A. They would sweep outside, around the building, pick up papers, dump garbage into big hoppers.
- Q. Are those hoppers known as dumpsters? A. Yes, they are.
- [1054] Q. What are your hours, Mr. Schob? A. At the present?
- Q. Yes. A. Six o'clock in the morning to three o'clock in the afternoon.
- [1055] Q. And you said at the present. Has there been a change? A. Yes, there was.
 - Q. What was the change? A. I used to work six to four.
- Q. When did that change come about? A. I would say five, six months ago or four months ago; something like that.
 - Q. Now did you know a Michael Brant? A. Yes, I did.
 - Q. And who is he? A. He works for maintenance.
 - Q. Is he with Mays now? A. Yes-No, no, he is not.
- Q. And did you ever have a conversation with him? A. Yes, I did.
- Q. Could you tell us about that conversation; when it was, who was there? A. Pertaining to what?

Q. Did you have a conversation with him on or about June 7? A. Yes, that day I did; yes.

Q. Okay.

Now, could you tell us what that conversation was about and where it was, et cetera? [1056] A. Well, it first started off on the morning of the 2nd, in the cafeteria, when myself and my men were on a coffee break.

Mr. Brant started to talk to myself and all the men about the union. He asked us if any of us would like to join it.

He told us the benefits that would be involved. That was the first incident I had with Mr. Brant.

- Q. Well, did he ask you, too? A. Yes, he did. I was present at the time. He asked all my men if any of us would like to join.
- Q. I am asking you did he ask you, too? A. Later on he did. In another incident which happened later that morning, after our coffee break.
- Q. I see. What happened there and where was it? A. After the coffee break my men had left, some had gone down to the main floor, myself and two other men were still on the second floor.

We had just a small little work to do when Mr. Brant came up and started to talk to myself and the other two men about the union again.

And asked myself and the two men would they like to join the union.

- Q. And he asked you, too? A. He asked me, yes, he did. I said to Mr. Brant, [1057] "Mr. Brant, this is working time right now, we are running behind, and my men and myself have to go downstairs," and we left.
- Q. Now, the business in the morning on the break, did you say anything to Brant? A. No, I did not.
 - Q. About how long was this conversation you just

testified to? A. The first one in the cafeteria must have been about ten minutes.

- Q. What about this one here? A. The second one was three or four minutes.
- Q. Now where was—where did that take place? A. The second one took place on the second floor, right by the escalators, which is known as the Dress Department.
- Q. Now, who were the others with you at that time? A. George Storm and Mr. Newcomb.
 - Q. Is Newcomb here? A. No.
- Q. What happened to him? A. Newcomb went back to school.
- Q. Was he dismissed? A. No, he was not. He was summer help.
- Q. And what about Storm? A. Mr. Storm still works for me.
- [1058] Q. Now, did you say anything to your men at the time of this four-minute conversation with Brant? A. No. The only thing I told him, that this was worktime, and we were running late and we have to move on downstairs.
- Q. Now did you see Brant again? A. Yes, I saw Mr. Brant later on when I had been downstairs on the first floor. I saw Mr. Brant and Murphy talking in the Blouse Department.
 - Q. In the where? A. Blouse Department.
- Q. That again. A. And I started to walk over, Mr. Brant left. And I said to Mr. Murphy, "What was Mr. Brant talking about, a union again?"

And he said, "Yes." He wanted to know if I wanted to join the union.

- Q. Well, did you say anything to Murphy? A. I just told Mr. Murphy to go back to work.
- Q. Now, did you have a conversation with Mr. Kaye? A. That same day?
 - Q. Yes. A. Yes, I did have a conversation with Mr. Kaye.

Q. What did you say to Mr. Kaye and what did Mr. Kaye say to you? [1059] A. Had to go to Mr. Kaye's office that morning to get some papers signed for some supplies that I was getting. And in the conversation I had told Mr. Kaye about the incidents that happened in the cafeteria on the second floor, and on the first floor.

And Mr. Kaye's words, as I put it, I got my butt chewed out for it for letting it go on.

He said that I should have known better to have Mr. Brant talk to these men about the union on the selling floor.

So I said, "Well, I didn't think about it at the time."

So then he asked me would I write up a statement on the effects—on everything that happened. And I said that I would.

- Q. Did you give that statement to Mr. Kaye? A. Yes. I did.
- Q. I show you General Counsel's 12, and ask you if that was your statement.

(Handing to witness.) A. Yes, it is.

- Q. Do you know what Mr. Kaye did with this statement? A. I do not.
- [1061] Q. Is that Chris Lynch? A. Yes. He is on the night crew. And asked Mr. Lynch how Mr. Dachevsky was working out. But Lynch told me that he was not working out at all because he would not complete his jobs, any jobs he would put them on, he wouldn't do the job. He'd have to co it. You would have to go around looking for him. Mr. Storm told me that he was not working out at all either, and that—

[1063] Q. Now, did you know that—When did you find out that Dachevsky was—had to—had some connection with a union? A. When these hearings started.

- Q. Did you know Dachevsky was—well, give us a date? A. Sometime in December.
- Q. Now where is this fellow Storm? A. George Storm still works for me.
 - Q. He is— A. He works for Mays under me; yes.
- Q. And Christopher Lynch, where is he? A. Christopher Lynch left. He went back to school.
- Q. When did he go back to school? [1064] A. If I remember correctly, it was either the 17th of December or the 21st of December, in between there was his last time he worked for me.
- Q. Now, did you know—I gather you knew Chris Lynch? A. Yes, I did.
- Q. Now, did you discuss Chris Lynch with Mr. Kaye? A. Yes. There was an incident that occurred with Mr. Lynch.
- Q. Now could you tell us what this discussion was about, and when you had it? A. Well, sometime in—I can't remember the date, but anyhow I remember the incident, Mr. Kaye had told me that he had seen Chris Lynch and—the other name escapes me right now, I know it—Mr. Cannon and Chris Lynch coming out of the passenger elevator downstairs in the basement, and that there was no elevator operator.
- Q. Who is Cannon now? A. Mr. Cannon is with maintenance, I believe he is on the night crew or he works late.
- Q. Do you know whether—you say "is." Is he still with Mays? A. I don't believe he is.
- Q. Okay. A. So I had approached Mr. Lynch on this subject.
- Q. I'm sorry. Did I interrupt? You were saying what [1065] you told Kaye and Kaye told you? A. No. No. Mr.—No, Mr. Kaye asked me to look into this, why Mr. Lynch and Mr. Cannon was in this passenger elevator with no elevator operator.

He asked me to find out why they were in there.

- Q. Is that against the rules? A. It is. You need an elevator operator to go up and down on the elevator. This was a passenger elevator. You have a passenger and you have a freight elevator. Freight elevator was manned by an operator, but the passenger elevator was not.
- Q. I see. A. So I asked—I said to Mr. Lynch, "Why were you and Mr. Cannon on the passenger elevator coming downstairs to the basement without an elevator operator?"

And he in turn tells me that Mr. Cannon was talking to Mr. Lynch about the union.

And I said to Mr. Lynch, "You know, Mr. Lynch, you are not supposed to be in this elevator with no elevator operator. You should know that."

So I let him go. And then I reported back to Mr. Kaye.

Q. So what did Mr. Kaye tell you then? A. Mr. Kaye said to me, would Mr. Lynch put down this incident on a piece of paper and write it out, what happened [1066] or what was said between the two of them while they were on the elevator?

I said, "Well, I would ask them."

So Mr. Kaye said to me then be very sure because I see I know he—I know when Mr. Kaye is saying something that is—he really means it, his voice goes very high, "Make sure you tell Mr. Lynch there's no promises, make no threats on this, that he does it on his own freewill."

Later on I went to Mr. Lynch and asked him if he would do so.

And Mr. Lynch—Mr. Lynch said he would. But there was some words said in between which I'm trying to remember. Oh, Mr. Lynch, I believe, asked me that if he had to do this. And I told him no. "You didn't have to do this because if you did you do this at your own free will."

Q. Was there anything wrong with that statement that he gave you? A. Yes, there was.

Excerpts of Stenographic Transcript of January 10, 1974. A. Schob, for Respondent, Direct.

- Q. What was wrong with it? A. He spelled—He had put Mr. Gannon there instead of Mr. Cannon and we had him rewrite it so that it would read Mr. Cannon.
- Q. Now, this is the same Lynch who went to school in December of 1973? A. Yes, it is.

[1070] Excerpts of Stenographic Transcript of Hearing of January 10, 1974.

PROCEEDINGS.

Judge Cohn: On the record.

Please continue with your direct examination, Mr.

Miller.

(Continued) DIRECT EXAMINATION:

- Q. (By Mr. Miller) Did you have a conversation with Mr. Lynch? A. Yes, I did.
 - Q. What was that conversation about?

Judge Cohn: When was it, first of all?

Mr. Miller: Oh, yes. I'm going from my questions.

May I just say, we're talking about that elevator thing.

Judge Cohn: I understand.

Still in all, I would like for him to establish a date with respect to the conversation.

Mr. Miller: Yes, sir.

Q. (By Mr. Miller) Well, do you remember when that elevator incident took place? A. I believe it was on the 26th of June or thereabouts.

- Q. And you testified something about an elevator incident? A. Yes.
 - Q. And you had a talk with Lynch? [1071] A. Yes, I did.

Q. All right.

What did you tell Lynch and what did Lynch tell you? A. I asked Mr. Lynch about the incident with him and Mr. Cannon when Mr. Kaye saw them coming off the elevator. He told me that Mr. Cannon was talking to him about the union.

Q. Now, was that the extent of your conversation with Lynch? A. That was the first conversation.

I reported back to Mr. Kaye and told him.

[1072] Q. Right.

We know about that. A. Then he asked me if he would like to make a—find out if he would like to make a statement on the situation.

- Q. Mr. Kaye asked you that? A. Yes.
- Q. Then you had a second conversation? A. Yes.
- Q. Okay.

Was there anything else? A. No.

Just I believe I stated the situation that happened between us when he was writing up the events, what happened.

- Q. Now, do you know a Mr. Murphy? A. Yes, I do.
- Q. Did you see that he was—that he had been testifying in the first part of these proceedings? A. Yes, I did.
 - Q. Do you recognize him? A. Yes, I do.
- Q. Now, who is he? A. Mr. Murphy worked underneath me. He was one of my men.
- Q. Now, did you see Mr. Murphy talking to Brandt? [1073] A. Yes, I did.
 - Q. When was that? A. On June 7th.
 - Q. Now, did you see them at any other time? A. Yes.
 - Q. When? A. I saw him later that day.

There was that incident that happened on June 7th. Oh, I seen him-

- O. I said see them? A. Them?
- Q. Yes.

Together, I mean. A. No, no.

- Q. Do you know Mr. "Z"? A. Yes, I do.
- Q. Who is he? A. Mr. "Z" is a floor manager.
- Q. Now, did you have a discussion with "Z" about Murphy and Brandt? A. No, not about Murphy and—yes, yes, I did.
- Q. Well, now, will you tell us about that, please? A. Mr. "Z" said to me that he thinks that I ought to have a talk with Mr. Murphy, that he might be goofing off a little bit.

[1074] I asked him why.

He said—he went out to the platform and he said he saw Mr. Murphy and Mr. Brandt standing outside. As soon as he appeared, Mr. Murphy started taking the broom and sweeping right away.

- Q. Well, did you tell this to Murphy? A. No, I didn't.
- Q. Well, did you put anything on his record? A. No, I did not.
- Q. Now, did you have any union conversations with Mr. Murphy where the subject matter was unions? A. No, I didn't.
 - Q. Did you talk to him about smoking? A. No, I did not.
 - Q. Did Murphy seep up garbage? A. Yes.
 - Q. Where did he do this? A. Inside, outside.
 - Q. Outside? A. Yes.
 - Q Particularly where? A. By the hoppers or dumpsters.
- Q. Again, hoppers and dumpsters, we will assume are the same? A. Yes.

[1075] Q. Now, who among your—strike that.

Did you have porters who worked outside? A. Everyone worked outside underneath me, inside and out.

- Q. Now, did you have a billy goat? A. Yes, we do.
- Q. Describe the billy goat?

Judge Cohn: It's been described several times. Mr. Miller: Okay, if you're satisfied.

- Q. (By Mr. Miller) Did Jimmy Mason operate the billy goat? A. Yes, Jimmy did.
 - Q. Did others? A. Everybody does.
- Q. Now, did you ask Mr. Murphy to clean up outside? A. Yes.
- Q. What happened to Mr. Murphy? A. Mr. Murphy got terminated.
- Q. Now, on or about the time he got terminated—do you remember when that was? A. Yes.
 - Q. When was it? A. It was sometime in June.
- Q. Well, on or about the time that Murphy got terminated, did you have a conversation with him? [1076] A. Yes, I did.
- Q. Will you tell us what the conversation was about? A. Yes.

I asked Mr. Murphy—it was sometime in the morning.

I asked Mr. Murphy—in fact, I told Mr. Murphy that it was his time to go outside and clean up outside with the billy goat.

He just flat refused, he wouldn't go.

Q. Well, did he give you a reason? A. No, he didn't give me a reason. He just said, "I will not go outside with the billy goat."

So-he said that to me two or three times.

So I said, "Well, I'm going to have to report this."

So he said, "Be my guest."

So I said, "All right. Then you go down into Receiving and work in Receiving for now."

He went down into Receiving and he worked there.

Now, later on I went upstairs to Mr. Kaye's office and told Mr. Kaye about this. I said, "Mr. Kaye, he just flat refused to

go outside. He didn't give me a reason, he just will not go outside and work with the billy goat."

And I said to him, "I think we'd better get rid of him because I can't have somebody who refuses to do something that everybody else does."

[1077] So he said-

Q. Did he- A. So he said-

Q. Go ahead, I'm sorry. A. So he said to me, "Well, I think you better bring Mr. Murphy up here."

I said, "I can't at this time. He's out to lunch."

He said, "When he comes back from lunch, you bring him up here."

And when Mr. Murphy came back from lunch, I told him that we have to go up to see Mr. Kaye.

Q. Well, were you present? A. Yes, I was.

Q. Well, what did Mr. Kaye say to Mr. Murphy and what did Mr. Murphy say to Mr. Kaye? A. Well, we went into the office. Mr. Kaye told Mr. Murphy to sit down. He said to Mr. Murphy, "You know that this is your job to do it, like everybody else, this job, and working inside and outside.

That's all you have to do is do this job and there will be no trouble."

And-

Q. At that point-excuse me.

At that point Mr. Kaye did not terminate Mr. Murphy? A. No, he did not.

[1078] Q. I see. A. In fact, he-

Judge Cohn: Why don't you just tell us what happened.

Q. (By Mr. Miller) He did not? A. No, he didn't terminate him right there. He just explained to him that—

Judge Cohn: You just tell us what Mr. Murphy said and what Mr. Kaye said, will you?

The Witness: All right.

Well, Mr. Kaye, your Honor, explained to him that this was his job, working inside and outside like everybody else and that if he would do this job everything would be all right.

Then Mr. Murphy said, "Well, I think you better terminate me."

So Mr. Kaye said, "Well, there's nothing I can do about it. I'll have to then."

[1083] Judge Cohn: Well, had Murphy worked outside before?

The Witness: Yes, Murphy had worked outside unloading a truck in the Garden Center, yes.

- Q. (By Mr. Miller) Murphy swept up the garbage outside, didn't he? A. Yes, he did.
 - Q. By the dumpsters? A. Yes, by the dumpsters.
 - Q. As you call them.

Judge Cohn: He just apparently didn't want to operate this machine; is that it?

The Witness: I imagine that's what it was. If he only would have told me: Listen, I do not want to operate it, I'm afraid of it, I might have been able to do something. But just flatly saying no and don't really give me an explanation why he didn't want to—if he would have said that, you know, I'm afraid of it. It could be possibly he's afraid of it.

But no explanation whatsoever, I couldn't—I couldn't take that, really.

H. A. Schob, for Respondent, Cross.

[1084] CROSS EXAMINATION:

Q. (By Mr. Appell) You testified, Mr. Schob, to a conversation in the cafeteria in which Brandt spoke to some people.

Is that correct? A. That's correct.

- Q. Did anyone else speak up at that meeting? A. No. Brandt was doing most of the speaking.
- Q. Who else was present? A. All of my men and myself.
- Q. You said about seven people altogether? A. Seven, eight, nine, something like that, yes.
- Q. Now, how long have you been Maintenance House-keeper Supervisor of Mays? A. I would say about a year.

[1085] Q. Did you ever talk to Murphy about any conversation that he had with Brandt? A. No, not a conversation with him.

The time Mr. Brandt and Murphy was together on the first floor, I asked Mr. Murphy if Mr. Brandt was talking about the union again.

- Q. What did he say? A. He said yes.
- Q. Did he say—did he explain further? A. He just said that Mr. Brandt asked him if he wanted to join.
 - Q. The union? A. Yes.
 - Q. And did Murphy say what his answer was? A. No.
 - Q. Are you sure of that? A. I'm almost sure of it.
- Q. Isn't it a fact that Murphy told you that he told Brandt that he would let him know whether he would sign a card? A. He would let him know, but he didn't tell me that he [1086] joined it or was going to join it.
- Q. Well, didn't Murphy tell you that he told Brandt that he would let him know? A. I guess he did.
- Q. In fact, you made a statement to that effect which you gave over to your supervisor, didn't you? A. Yes.

H. A. Schob, for Respondent, Cross.

- Q. I show you— A. If it's in there, it's true then.
- Q. I show you General Counsel's Exhibit 12. Is this the statement that you gave Mr. Kaye?

(Handing.)

- A. Yes, it is.
- Q. And isn't it a fact that you did talk to Murphy about the union? A. I wouldn't really say I did talk to him about it.
- Q. But it is your testimony that you asked Murphy, was Brandt talking to you about the union again? A. Yes.
- Q. Now, you testified to a second incident on June 7th where you and two men were on the second floor or around the second floor and Brandt came up to you again.

Do you remember testifying to that? A. Yes, I did.

- Q. Whom were you with at that time? [1087] A. Mr. Storm (Phonetic) and Mr. Newcomb.
- Q. And you say that you told—well, what did you say to Brandt when he asked the men to join the union? What did you say to him? A. I said I would let him know.
- Q. You told him that which time, the first time or the second time? A. On the second floor in the Dress Department.
 - Q. Is that all you told him, at that time? A. Yes, I did.
- Q. You didn't tell him anything else? A. Not pertaining to the union.
- Q. What did you tell him the first time in the cafeteria? A. I don't believe I told him anything in the cafeteria about it.
- Q. The second time you told him you'd let him know? A. Yes.

[1088] Q. Now, after that you first saw Brandt talking with Murphy; is that correct? A. Yes.

- Q. Do you remember where that was? A. The Blouse Department, first floor.
 - Q. What did you say to-strike that.

Did you talk to Murphy in the presence of Brandt? A. No, I did not.

- Q. Did you talk to him afterwards? A. Yes.
- Q. And what did you say to Murphy? A. I asked Mr. Murphy, was Mr. Brandt talking about the union again?
 - Q. And what did Mr. Murphy say? A. Yes.
 - Q. Did you say anything else at that time? A. Yes.
- Q. What? A. He told me that he was talking about the union and if he wanted to join.
 - Q. And what did Mr. Murphy tell you he said? A. He-

Mr. Miller: Your Honor, he's asked the question before and he got an answer. Then he showed him a statement.

[1089] He successfully showed him that he did not—that Murphy didn't say something. You will draw the appropriate significance for that.

Do we have to go through this again?

Mr. Appell. Your Honor, by counsel's statements now, he destroyed the whole push of my questions, which is to say if this witness' story is consistent.

Mr. Miller: Oh, I believe you are always going to try to switch on comments, my dear fellow. I believe that a hundred percent.

Judge Cohn: Well, I don't really understand a lot of the cross examination.

The witness has acknowledged that he asked Murphy what Brandt said and he indicated that in his statement. I really don't understand why you are going over this.

Q. (By Mr. Appell) When did Kaye ask you to write up this—

Judge Cohn: There's one question though I wish you'd cover in your brief while I'm thinking about it, and that is, let's assume that there is a valid no solicitation rule, just for the purpose of assuming that.

And an employer sees two men talking. He goes over and asks them whether or not they were discussing the union.

Now, you might argue, absent a valid no solicitation rule, that that would be unlawful interrogation. But I was [1090] wondering whether or not assuming a valid no solicitation rule, whether or not an inquiry like that in order to ascertain whether or not the solicitation rule is being violated, would constitute illegal interrogation.

I don't want your argument now, I just would like— Mr. Miller: I can give you a case right on the subject right now in case you want.

The case is Eastside Shoppers, July 9th, 1973, 204 NLRB No. 125, and it's also cited in 83 LLRN, 1592.

Judge Cohn: Thank you.

Mr. Miller: I think you'll find that case greatly in point to what you just said.

Judge Cohn: Thank you very much. Go ahead.

Q. (By Mr. Appell) Do you remember when Mr. Kaye asked you to write up a statement for him about the conversations that Brandt was involved with and your conversation with Murphy? A. It was written up on the 7th of June.

[1092] Q. When did Kaye tell you that he saw Lynch and Cannon coming out of an elevator? A. On the 26th.

Q. Of June? A. I retract that.

It was the 27th. The 26th was the incident.

- Q. When did you ask Lynch to write up a statement? A. The next day.
 - Q. What day was that? A. The 27th, I believe.
- Q. Did you ask Lynch if he was talking about the union with Cannon? A. Mr. Lynch volunteered the information.
- Q. Did Kaye tell you why he wanted a record this conversation between Lynch and Cannon? A. No, he and not.
- Q. Do you recall telling Lynch to put down that this was of his own free will that he made this statement? A. Yes, I did.
- Q. How do you remember the date, June 26th? A. Because June 26th was on the top of the statement that Mr. Lynch made.
- [1093] Q. Did Mr. "Z" tell you how long he saw Murphy and Brandt talking? A. No, he did not.
- Q. You didn't see that particular incident, did you? A. No, I did not.
- Q. Did Mr. "Z" make any record of that conversation, to your knowledge? A. Not to my knowledge.

[1094] Mr. Appell: Your Honor, may I call upon counsel for the Respondent to produce records showing what Mason's weekly earnings are, gross?

Judge Cohn: What for?

Mr. Appell: I think there may be—I think the record show—I don't know myself—but it may show that Mason earns less.

I believe that this will show that Mason was just not one of the other porters, as this witness has sort to testify.

It may show that Mason did have different duties of a different nature which may be attested to by the difference in the wage earnings.

Judge Cohn: Well, it would take more than simply differential in wage earnings to convince me of the ultimate [1095] fact that you want me to conclude.

Mr. Appell: I'm aware of that, your Honor. I do think this might be one criterion, however.

Mr. Miller: We have here, I believe, a typical example of my complaints.

Will General Counsel for the General Counsel say whether or not he subpoenaed Mr. Mason and then having subpoenaed him did not call him.

Judge Cohn: Well, I will not—I don't want to get into this colloquy. I don't think that that information, at least at this particular point in time, is warranted, that is, to direct you to divulging those records.

If later on I change my mind, I'll let you know. There's no question, I gather, in the record that this Mr. Mason worked in this department along with these other men. I understand that it's your contention that Mason's primary duty, if not sole duty, was in connection with the operation of this billy goat machine.

Your theory is predicated on that. I don't see that the difference in wage rates would be very important on that point.

[1097] Q. Didn't Murphy tell you why he didn't want to go out on the billy goat? A. No, he did not.

- Q. He just said he wouldn't do it? A. Flat refused.
- Q. Had he ever done that before, refused to do something? A. No.
 - Q. Did you ask him why? A. Yes.

H. A. Schob, for Respondent, Re-direct.

He just wouldn't tell me why.

- Q. Did Murphy ever refuse to tell you something that you asked him before? A. No.
- Q. In fact, you had normally found him to be a good worker, hadn't you? A. Oh, yes.

I had no complaint with Murphy's work at all.

[1099] **RE-DIRECT EXAMINATION:**

- Q. (By Mr. Miller) Could you name some of the others who operated the billy goat? A. Mr. Storm is one.
 - Q. Is Mr. Storm in the room? A. Yes, he is.
- Any others? A. Mr. Newcomb did, DeCosta. They would all go out eventually, outside.
- [1100] Q. Now, on June 7th, I believe you testified you at one point told-you said something about go back to work.

Do you remember that in your testimony? A. Yes.

Q. When was that?

Could you tell us more about that, where you said it and to whom you said it? A. On the second floor by the Dress Department. I was present, Mr. Storm, Mr. Newcomb and Mr. Brandt, I said that we have to do a day's work, or something to that effect, and we're running behind and we have to lean.

Now, Murphy-I mean at the time Mr.-let me-strike Q. that.

At the time that Mr. Murphy was terminated-strike that, too.

You testified you made a recommendation that Mr. Murphy be terminated.

Is that correct? A. Yes.

G. Storm, for Respondent, Direct.

[1101] Q. At the time that you made that recommendation that Mr. Murphy be terminated, did you know whether Mr. Murphy had joined the union? A. Not at that time, no.

Q. Okay.

Mr. Miller: I don't have anymore questions.

[1102] Mr. Miller: I call Mr. Storm.

Whereupon, GEORGE STORM was called as a witness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:

Direct Examination:

- Q. (By Mr. Miller) What is your full name? A. George Storm.
 - Q. Mr. Storm, are you employed by J. W. Mays? A. Yes.
- Q. In what department are you? A. Maintenance House-keeping.
- Q. When did you first go to work for Mays? A. I started May First.
 - Q. Is that the Mays in Massapequa? A. Yes.
- Q. What are you—what are your hours? A. My hours? [1103] Q. Yes. A. Well, from six to four and then on Saturday it was from six to three when we worked for four hours.

[1104] Q. (By Mr. Miller) Now, did you ever—do you know a fellow called Brandt? A. Yes.

G. Storm, for Respondent, Direct.

- Q. Who is he? A. He was a maintenance man that worked at Mays.
- Q. Did you ever have discussions with him? [1105] A. Well, he had talked to us. I had never said anything to him, though.
 - Q. And what did he say? A. Well, he told us-
- Q. Can you tell us where and when this was, to the best of your ability? A. Well, it was June 7th. He had talked to us about the union on the second floor by Dresses.

It was myself, Harry Schob and another fellow worker.

- Q. What was his name? A. James Newcomb.
- Q. What did he say at that time? A. Well, he had just talked about the union and how it could help us, not hurt us at all.
 - Q. Now, were you on duty? A. Yes.
- Q. And what was Brandt doing? A. He was talking to us—walking with us as we started to go down to the first floor.
- Q. Do you remember what time of day this was? A. It was in the morning.
 - Q. Was it after seven o'clock? A. Yes.

[1107] Q. Mr. Storm, did you sign a card for the union? A. Yes.

- Q. Did you have a conversation with me prior to the time you came here? A. Yes.
- Q. What did I tell you and what did you tell me? A. Well, I had told you about—you had asked me about the incident on June 7th.

I had told you about it.

And you had told me—you has asked me if I would testify. I had said yes.

You said that you would make no promises, that this was of my own free will.

- Q. And when did I tell you this? A. I don't remember the exact date.
- Q. Well, did I tell you this before you talked to me or after you talked to me? A. Before.
 - Q. Do you remember what else I told you? A. Yes.

You told me if I did not want to testify, I didn't have to, you know, without anything happening.

Mr. Miller: Your witness.

C. OSS EXAMINATION:

- [1108] Q. (By Mr. Appell) How many conversations did Brandt have with you on June 7th? A. One.
 - Q. Where was that? A. On the second floor by Dresses.
- Q. Didn't he also talk to you in the cafeteria? A. I was there when he was talking, yes.
 - Q. What time was that? A. About seven o'clock, I'd say.
- Q. What did he say, at that time? A. Well, he was talking about the union, basically.
- Q. And what time was the second conversation. A. About 7:30
 - O. A. M.? A. Yes.
- Q. Who else was present? A. Harry Schob and a fellow employee by the name of James Newcomb.
- Q. What did Brandt say, at that time? A. Well, he had kept on talking about the union and how it could help us.
- Q. What did Schob say? A. Well, he had stated that we were working and that we were running late.

[1109] Q. When did you sign a card for the union? A. I can't recall the exact date.

- Q. Who gave you the card? A. Mr. Brandt.
- Q. And was it the same day, June 7th? A. I can't recall.
- Q. Did there come a time after the when you changed your mind about supporting the union? A. Well, I felt that at the time it couldn't hurt us, all it could do is help us.
- Q. Did there come a time when you changed your mind about the union? [1110] A. Not really.

I don't know. I really couldn't answer that because I don't know what the union could do now.

- Q. You never did see Dashefsky go to sleep on the job, did you? A. No.
- Q. It wasn't part of your job to look after other employees and report to Mr. Schob on their work, was it?

Mr. Miller: Objection.

There is no such testimony and no such claim.

Judge Cohn: Well, if you have an objection, Mr. Miller, I've told you before that I wish you would not make any statement that might be educative to the witness.

Overruled.

A. Excuse me.

Would you please repeat the question?

Mr. Appell: Could the Reporter please read it back, your Honor?

(Record read.)

A. Oh, not really.

But if he had asked me a question, I would answer it.

Mr. Miller: Now, may I interpose now something? Judge Cohn: Yes.

Mr. Miller: I—my purpose, your Honor, was to try [1111] to put some limits on what I consider to be the

extreme leniency with which you allow counsel to cross-examine these witnesses. And to go ahead and to ask questions about things that aren't in evidence for the obvious purpose of trapping, is what I think.

I think I have a right to say that. I did not mean to educate. But if I object, it is frequent practice before this Board and before any number of administrative judges, to state what the purpose of our objection is.

Judge Cohn: You can state what the purpose of your objection is, as I indicated previously, whether it's not irrelevant, whether it's incompetent or some statement such as that, without stating in a manner which might educate the witness what, as I interpret it, you did.

I am not intending to intimate you did it purposefully. I just would like for you from now on not to make such statements in the future.

Would you please do that?

Mr. Miller: Well, I'll certainly obey your admonition.

Judge Cohn: Thank you.

Mr. Miller: That does not mean to say, with great respect, that I agree with the basis of your statement.

Judge Cohn: If you want to make an argument which might be educative of the witness, I'll ask the witness [1112] to step out of the room.

Go ahead, Mr. Appeil.

Mr. Appell: Yes, sir.

- Q. (By Mr. Appell) Mr. Storm, when did you have the conversation with Mr. Miller that you testified to? A. I can't remember the exact date.
 - Q. How long ago? A. A couple of weeks ago.
 - Q. And had anyone else asked you about this incident,

any of these incidents that you testified to here today— A. No.

- Q. -before Mr. Miller did? A. No.
- Q. Well, do you have any idea then why Mr. Miller came to you to ask you to testify?

Mr. Miller: I object.

Judge Cohn: Sustained.

- Q. (By Mr. Appell) Did Mr. Kaye or Mr. Schob ever tell you that there was going to be a hearing at the Labor Board? A. Well, I had heard rumors of it.
- Q. And didn't you sign a statement for Mr. Schob about a conversation that Brandt had with you? A. Yes.
- [1113] Q. And what conversation did you describe in that statement? A. The one that took place on the second floor.
 - Q. By the dresses? A. Yes.
- Q. Did Mr. Schob ask you to draw that statement up? A. He asked me if I had remembered about the conversation that took place on the second floor, yes.
 - Q. And what did you say? A. I said yes, I had.
- Q. And then what did he say? A. Well, he had asked me if I would write out a statement to it.

Mr. Appell: I call upon counsel to produce that statement now.

Mr. Miller: I produce the statement and show it to counsel. I believe it improper to ask, but nonetheless I supply counsel with the statement.

(Handing.)

- Q. (By Mr. Appell) Did Mr. Schob ask you to put on the statement that you made it of your own free will? A. I had put that down there because I had made it of my own free will.
- Q. But, did he ask you if you would put it there? [1114] A. He asked me if I would put it there.

- Q. And you said you would? A. Yes, because—
- Q. Was he present when you wrote this statement out? A. Yes.
 - Q. Where did you write it out? A. I wrote it upstairs.
 - Q. Where? A. In one of the offices.

Mr. Appell: I ask that the Reporter mark this document as General Counsel's Exhibit No. 15 for identification.

(The above-mentioned was received and marked as General Counsel's Exhibit No. 15 for identification.)

Mr. Miller: I will be glad to stipulate into evidence, your Honor.

Q. (By Mr. Appell) Mr. Storm, I show you General Counsel's Exhibit 15 for identification.

Is this the statement that you've testified to?

(Handing.)

A. Yes.

Mr. Appell: I offer it in evidence.

Judge Cohn: Well, for what purpose?

Mr. Appell: As part of the evidence of directing employees—of engaging in surveillance with employees and [1115] directing them to make a statement which could be deemed part of that coercive pattern.

Mr. Miller: May I be heard?

Judge Cohn: Certainly.

Mr. Miller: I don't believe of any part of anything that came out can justify the statement just made by counsel about directing a witness to sign anything. There hasn't been an iota of testimony to that effect.

Now, if this is part of his proof, I say this is completely unrelated.

However, I want to make sure that for reasons which I may have indicated off the record with respect to prior cases, that I have no objection to this thing going in whatever except that I make clear that there's no connection between its introduction and counsel's statement. Now, the decision, of course, is yours.

I just wanted to state my position on the record.

Judge Cohn: Well, at this point, I don't see how this fits in with the statement that you just made, Mr. Appell. But rather than have a to-do about it and since it's a one-page statement, and since apparently there's no objection, I'll let it in for whatever it's worth.

But, at this point I can't see that it's worth much. I'll receive G. C. 15.

[1116] (The above-mentioned was received and marked as General Counsel's Exhibit No. 15 into evidence.)

Judge Cohn: In other words, what I'm saying is, just so it is clear to you, for whatever it may be worth to you, Mr. Appell, is that the fact that an employer learns of some event that's occurred in its plant or factory or whatever and wants to document that event by asking the employee or employees to make a statement concerning it, without more I don't see that that proves anything.

Maybe you can educate me on that. Go ahead.

[1125] Mr. Miller: Before we continue with the witnesses, your Honor, may I call upon counsel for the General Counsel to stipulate that Mr. Mason was subpoenaed by him and was not called?

F. Strayhorn, for Respondent, Direct.

Mr. Appell: If your Honor wants me to make a statement on that matter, I will, if you believe it's germane.

Judge Cohn: Well, if you want to make a statement as to any people that were subpoenaed and not called, go ahead.

Mr. Appell: He was sent a subpoena, but he didn't receive it. The subpoena was returned to this office unclaimed.

As far as I know, he, therefore, was never served with a subpoena to appear in this case.

Judge Cohn: All right.

Call your next witness, Mr. Miller, please.

Whereupon, FLORINE STRAYHORN, was called as a witness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:

Direct Examination:

[1126] Q. (By Mr. Miller) What is your full name? A. Florine Strayhorn.

- Q. Mrs. Strayhorn, are you employed by J. W. Mays? A. Yes.
 - Q. And where are you employed? A. Matron.
 - Q. Where, what store? A. In Massapequa.
 - Q. And what is your job? A. Matron.
 - Q. Now, do you know a Michael Brandt? A. Yes.
- Q. Could you describe him? A. He was a tall, heavy-set kind of fellow.
- Q. Now, did you have a conversation with Mr. Brandt? A. Well, not very long. I was coming from the back of the store. I was on my way down to relieve one of the girls around lunch time.

F. Strayhorn, for Respondent, Direct.

He happened to be coming down the steps and he stopped me. He asked me would I be interested in joining a union. I told him I wasn't interested in it.

- Q. Well, do you remember what day this was? A. I don't know exactly, but I know it was around June 12th, something like that.
- [1127] Q. And what are your duties, Mrs. Strayhorn? A. Well, we have to see that the bathrooms are kept clean, clean the mirrors, and then sometimes I relieve on the elevator, too, sometimes.
 - Q. Is that the passenger elevator? A. Either one.
 - Q. I see.

Now, when do you have lunch normally? A. Well, our lunch time varies because sometimes we have to relieve one girl at 12, maybe another one at one, and then sometimes I go with two.

- Q. Well. your lunch sometimes varies between 11 A. M. and two P. M.? A. Well, between 12 and two P. M.
 - Q. Now, did you testify this was on the selling floor?

Mr. Appell: Object-on.

A. This was in the basement.

Mr. Miller: I'm sorry, I thought you testified to that effect.

- Q. (By Mr. Miller) Do they sell things in the basement? A. Yes.
- Q. What do they sell in the basement? A. There is housewares, domestics and major appliances and stationery and hardware and toys.

[1128] Q. Could you tell us, when Mr. Brandt talked to you— A. Yes.

Q. —what department was it nearest?

F. Strayhorn, for Respondent, Direct.

Do you know? A. Right down in the back, the steps going upstairs.

Q. I see. A. Near the ladies bathroom and the mens bathroom.

O. I see.

Is that a hallway? A. Well—no, that's not the hallway. The steps o upstairs to the first floor.

O. I see.

Was there a department near those steps? A. Well, the domestic—no. The Housewares is there.

Q. I see.

Mr. Miller: May I have one moment, your Honor, please?

Judge Cohn: Yes.

- Q. (By Mr. Miller) Now, you have matrons working under you? A. Yes.
 - Q. What is your title? A. The manager.
 - Q. Of the? A. Of the matrons.

[1129] Q. I see. A. And I have the elevator, I'm in charge of that, too, sometimes.

O. I see.

Do you know who is allowed to operate the passenger elevator? A. Well, we have a young fellow operating the passenger elevator—I mean the freight elevator now.

We have a lady that operates the passenger one at the time.

Q. Is anybody else allowed to operate that passenger operation? A. No, because it's not self-operated. It's not supposed to be operated by anybody else but the operator.

[1143] Mr. Miller: I call Paul DeRonde.

Whereupon, PAUL R. DeRONDE was called as a witness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:

Direct Examination:

- Q. (By Mr. Miller) What is your full name? A. Paul R. DeRonde.
- Q. Now, are you employed by J. W. Mays? A. That's correct.
- Q. In what capacity? A. Operating Engineer for the Mays Department Store in Massapequa.
- [1144] Q. In or about June of 1973, how many people did you have working under you? A. In June?
 - Q. Yes. A. Let's sec.

There was Michael Brandt; there was Frank Collette; Thomas Klepack, Thomas Izzo, Sal Gambino, Bob Roudaboush, John Cannon; and I believe that was all.

- Q. Now, what are the duties of your department? A. Well, we maintain the entire building as far as heating, ventilation, air-conditioning, electrical, repair of ceiling tiles and floor tiles, roof leaks, motor replacement, anything that would pertain to the operation of store functions mechanically.
 - Q. Do you have-strike that.

Who is in charge of the lights? A. I am.

Q. Now, what happens if a light goes bad? A. Well, usually I assign—the way I break it up, I got three floors—actually four floors, the machine room being included.

There are three selling floors and the machine room.

Q. What are the selling floors? A. The selling floors are the basement, the main floor and the second floor.

[1145] Q. I see. A. The machine room is above a portion of the second floor.

- Q. Okay. A. Usually what I do is that I assign an individual to a particular floor and I make him responsible for the entire lighting on the floor.
- Q. What do you call that procedure of replacing bulbs? Is there a name for it? A. I call it lamping.
 - Q. Lamping? A. Yes, sir.
 - Q. How does this lamping procedure take place?

A man is assigned, I think you said? A. That's correct.

- Q. He is assigned to a floor? A. That's correct.
- Q. And then what is he supposed to do with respect to this lamping? A. He's responsible to me for the complete lighting of the entire floor.
 - Q. Well, what does it involve?

Does it involve any— A. It involves changing a lamp or changing a ballast or transformer, whichever technology you want to use.

- [1146] Q. Well, does he have to go around and look around to see if the lights are out? A. Of course.
- Q. And then when someone is finished with whatever job he's doing, what's he supposed to do then? A. Report back to my shop.
- Q. And do you communicate this requirement with your people? A. With everyone of my personnel.
- Q. Now, what is the purpose of having them go—let's say they finish a job in the basement, and then they go and come back to the shop? A. So I know where the hell they are and I can assign them another job.
 - Q. So you know where they are? A. That's correct.
- Q. Now, do you know a man called Cannon? [1147] A. I certainly do.
- Q. Well, who is he? A. He was my maintenance man at night, my helper.

- Q. What were his hours? A. I believe he started at five o'clock, and he worked 'til the store closed, which, I believe, was 9:45.
- Q. I believe your hours—you said you usually left at 4, 4:30? A. Usually, yes.
- Q. Did you have opportunities to converse with Mr. Cannon? A. Not too many.
- Q. Now, supposing you had orders, what would you do? A. Well, if I didn't pass him on the way going out on an escalator or a staircase or as I was going out and he was coming in by the time clocks, I would leave a message with one of the men who were on later that would run into him to have John do such-and-such or check such-and-such.
 - Q. I see.

[1148] Q. Now, do you know Brandt? A. Yes, I do.

Q. What was Brandt? A. What was he?

Q. Yes. A. A maintenance helper.

0. . . .

[1149] Do you know what happened to Cannon with regard to his employment? A. He just disappeared. He never showed up anymore.

Q. About when did this take place, so far as you can recall? A. Oh, Christ.

I'm not really sure of the dates. It was sometime, I believe, in—

Judge Cohn: I think it's established in the record that it was around October.

Let's proceed with something involved in this case, Mr. Miller.

Q. (By Mr. Miller) Now, did you discuss the union with Brandt or anyone else in your crew? A. Discuss the union?

- O. Yes. A. No.
- Q. Did you mention the union? A. No, I didn't.
- Q. Well, who did? A. They did.
- Q. Who is "They"? A. My men.
- Q. Who are "they"? [1150] A. Well, any one of them might ask me a question or something about the union.
- Q. Well, when was the first time that you can recollect? A. Well, we had some hearings which I was present at here. And when it was all out in the open, they began to discuss different things.
- Q. Like what? A. Oh, one time—I don't remember who asked me, but someone asked me: Do you think we'll get fired because we signed union cards?
- Q. What did you say? A. I said, "Of course not. How can they do something like that?"
- Q. Did you indicate an attitude with respect to the union?A. None whatsoever. I was unconcerned.
 - Q. Are you concerned now? A. No, I'm not.

Mr. Appell: Objection. Judge Cohn: Sustained. Strike the answer, please.

Q. (By Mr. Miller) Your title was what now? A. Operating Engineer or Building Engineer.

[1151] Q. And did you have an assistant? A. When?

- Q. In June of 1973? A. No, I did not.
- Q. Did you have one in May or April? A. No, I did not.
- Q. Did you discuss getting one? A. Yes.
- Q. When did that happen and who was there and tell us what was said? A. Well, I lost my assistant at one point in the game. I don't know whether it was in '73 or what. I had spoken to Mr. Rooney. I said that I had to have a replacement, that it's just inconceivable for me to operate without an assistant.

- Q. So? Who is Rooney? A. Rooney is my supervisor. He's the chief engineer.
 - Q. Over all of the stores? A. That's right.
- Q. Well, then what happened then? A. Well, he said to go ahead and hire one.

I says, do you want me to go out and hire a man with refrigeration and air-conditioning experience? He said no, just get somebody to assist you or take somebody out of the crew if you can. So I says, well, I says, that [1152] one guy I would like—that I would like to review for it, who was Mr. Thomas Klepack. But I said that the rest of my crew—I didn't like, you know, as far as handling men and judgment and so on and so forth, I didn't think there was too much of a choice there.

And I was lacking a man from my crew, so I decided that if I hired another man that I would look for a man who had some kind of initiative. I went through a caboodle of people.

Michael Brandt came and answered an advertisement for a job. I interviewed him. He seemed to be quite aggressive, you know, as far as learning would be concerned.

He had no prior experience in the type of operation which I had.

Judge Cohn: Excuse me just a minute, Mr. DeRonde.

The Witness: Yes, sir.

Judge Cohn: Before you go into all of this, can I ask you just one question as to whether or not you ever had any conversations with Mr. Brandt concerning any promotion?

The Witness: I never had any conversation—oh, yes, I did, your Honor.

Judge Cohn: Would you get to that?

The Witness: Sure.

Judge Cohn: Thank you.

[1153] A. (Continuing) After I had hired Mr. Brandt, I watched, naturally, to see what kind of a man he was and how he's progressing and so on and so forth. He seemed to be doing very well.

So one day I stopped Mr. Brandt and I said, "Mike", I said, "If you continue to show me the aggressiveness and the aptitude," I said, "You'll be considered for an assistant's job."

I, also, spoke to Mr. Klepack and told him the exact same thing.

Judge Cohn: Well, did Brandt say anything?

The Witness: Well, you know, he asked me how much money would be involved and so on and so forth.

Judge Cohn: Is that about all there was to it?

The Witness: Yes.

Judge Cohn: When was that?

The Witness: Oh, I'd say maybe three or four weeks after I hired him or three weeks after I hired him.

Judge Cohn: And when was that?

The Witness: Sometime in January, I believe, or the early part of—probably January or the early part of February.

[1154] Q. (By Mr. Miller) When did you—strike that. Did you reach a decision to hire an assistant? A. Yes, I did.

- Q. When was that? A. Sometime in June.
- O. In June? A. Yes.
- Q. And did you get one in June? A. No, I did not.
- Q. Well, do you know of an assistant? A. Yes, I do.
- Q. What's his name? A. Thomas Klepack.
- Q. When did he become what he became? A. Maybe four weeks ago he became the assistant.

Q. Now, were you present when Brandt received a warning? A. Yes, I was.

Q. Can you tell us what part you played in this? A. I was working in the cafeteria at the time. I received a phone call from the operator to please report to Mr. Kaye's office.

So I went there. Mr. Kaye asked me if I would please bring Mr. Brandt or have him come to the office. So [1155] I paged Brandt. He came to the office.

Judge Cohn: Would you tell us about when this was?

The Witness: I beg your pardon?

Judge Cohn: Could you tell us about when this was?

The Witness: I believe it was June 7th. Judge Cohn: Go ahead.

A. (Continuing.)

Mr. Katz was present at the time. He told Mr. Brandt to have a seat. He asked me to have a seat, too. He said to Mr. Brandt, "Mr. Brandt, we have reason to believe that you've been soliciting for a union, and we do not want you to do this in the areas that you have done before.

We don't want you soliciting on the selling floor or interrupting"—this is not per se, you know, this is from what I remember.

"We do not want you interrupting another person's job or interrupting your job to solicit, but you may solicit either in the cafeteria on your lunch break or in the men's lounge or locker room when you're off duty or in the parking lot or whatever you want to do after you finish work or wherever."

Judge Cohn: Who said that now?

The Witness: Mr. Katz. Judge Cohn: Okay.

[1156] Q. (By Mr. Miller) What did Brandt say? A. He said, "Who? Me?"

Q. Now, did you have a discussion about a NLRB decision? A. I—

Judge Cohn: With whom?

Mr. Miller: With any of his people.

A. Yes.

Q. Tell us about that. A. One day Mr. John Cannon called the store. I received the phone call in my office.

He says, "Hey, Paul, is Mike around?"

I said, "He's over in the coffee shop having coffee."

He said, "Will you do me a favor?"

I said, "Yes. What's up?"

He says, "Would you please tell Mike that we won?"

So I says, "What do you mean you 'won'?"

He says, "We won the case. We're in."

So I figured he meant that the union was in.

He said, "But we got to get a few more names."

So I said, "Okay, John."

I hung up. I was going for coffee, anyways. And while I was over there, I said, "Mike," I said, "Can I speak to you for a moment?"

[1157] So he got off from the table and he came over to me.

I said, "John Cannon just called and told me to tell you that you're in. I guess he meant the union is in."

He began to get excited and so on and so forth.

Q. Was there another conversation about another decision? A. I don't think so.

No.

Q. Did you make a—did you make an offer to the union people? A. Did I make an offer to them?

Q. Yes. A. No, I did not.

Q. Were you asked—strike that, please.

Did Brandt question you about any promotion? A. Yes, I believe he did. He says, "What's happening? Are you going to pick an assistant or what?"

[1158] I said, "They're still being reviewed, Mike."

- Q. Do you remember when this took place? A. Oh, no. I didn't jot down dates.
- Q. Is that the extent of the conversation? A. I believe so.
- Q. Now, did you see Mr. Brandt talking with Miss Gribbins? A. Yes, I did.
- Q. When was this? A. It was the same day that I gave him a reprimand for not doing his duties.
- Q. Do you recall when that was? A. I believe that was June—I think it was the 11th of June that I gave him the reprimand.
- Q. Well, will you describe the circumstances? A. Well, there was a whole lot of things that go into this. It wasn't an accident that I seen him—it was an accident that I seen him talking to Laura, but it wasn't an accident that I watched him.
- Q. Well, why did you watch him? A. Well, I had been getting a few reports—usually when there were lights out or bulbs out on the floor, the people from the department call me. They say, "Paul, the bulb is out in" such-and-such department.
- [1159] Q. Unless I'm mistaken, I think you may have to go a little slower. I don't know. A. I get calls that there are bulbs out. And usually I don't pay too much attention to them because they are usually taken care of during the course of a day, if it's one, two or three bulbs and so on. I had come in a few mornings and noticed lighting out on the second floor, as I would on any other floor.

I spoke to Mr. Brandt. I says, "Mike," I says, "Let's keep up with the lights."

He said, "Okay." On another occasion I came in and I was called by the girl who operates the boutique that there were a lot of lights out in the boutique. The boutique has a door which is locked on it during the night and opened in the morning hours.

So I spoke to Mike again. I said, "Mike, there are lights out in the boutique. Go take care of them."

He said, "I couldn't get in there this morning because the door was locked."

I said, "Okay." As time passed on, I noticed—my office is situated in such a place with my door open, I can see my men going back and forth from the shop to the second floor. I noticed Michael Brandt several times walking out on to the second floor with this little cart that he used for changing bulbs. And this was after 9 o'clock.

[1160] I says, "Mike," I says, "Where are you going with the bulbs now? You're supposed to be finished bulbing."

He says, "I just noticed a few bulbs out on my way coming back from coffee and I'm going to change them."

I said, "Okay."

A few days past, maybe a week. I see him going out again, 9 o'clock or after. I says, "Mike, where are you going now?"

He said, "I noticed some more bulbs out on the way coming back from coffee."

I became interested in what was going on. I had been getting reports from the men in the shop that Michael Brandt was not carrying out his duties. But I wouldn't take that as law. I would have to find out for myself.

Things progressively seemed to build up as far as Mike Brandt's duties were concerned in the morning. So one morning I decided to come in for myself and find out what the hell was going on.

I came in at somewheres around 7:15, I believe it was. I checked the entire second floor. Michael Brandt was not on

the floor, nowheres. I walked back around through the corridors in the back.

As I approached the shop—I don't remember what time it was—but I heard Michael Brandt say to Frank Colletto in the shop, "Let's take a walk down to Hardware."

[1161] So I knew this was unusual. I went down to Hardware, but I didn't go into Hardware, I went into the adjacent department. I saw Michael Brandt, Frank Colletto come down there, without a tool in their hands, without a bulb in their hands, walking like they were about to do nothing, and walked into the Hardware Department.

Frank Colletto was standing near Mr. Brandt and Laura Gribbins walked in. Mike began to talk to Laura. Frank walked away from her. That was the last thing I wanted to see.

I came back upstairs and went into my office.

At approximately five to nine, I went over to the cafeteria where Michael Brandt, Tom Izzo and Frank Colletto were sitting down having coffee.

I said, "Good morning." I said, "Frank," I said, "How many cups of coffee you have today?"

He says, "This is my first."

I said, "How many did you have, Mike?"

He says, "This is my first."

I said, "Mike, have you done your floor today, your lamping?"

He said-"Yes, I did."

I said, "You checked the whole floor; there were no lights out anywheres?"

He said, "Oh, there might be one or two out."

[1162] I says, "Mike, you're a damn liar."

He says, "What do you mean?"

I said, "You've been here since at least ten after or a quarter after seven." I said that, "I couldn't find you anywheres

on the floor. Your bulb cart has been in that shop all this time and I don't know what the hell you were doing but you weren't working. I heard you say to Frank, "Let's go for a walk down to Hardware."

I says, "Now, I want this floor lamped and I want it lamped everyday and I want it done in the hours which I told you to lamp them."

And that was between the time that he came in up until ten to nine. I was quite aggravated with the situation. I went back into my office. I sat down. I cooled off. Mr. Colletto, Mr. Brandt and Mr. Izzo came back.

Mr. Brandt stopped into my office. He says, "Paul, I'm sorry that happened."

He said, "I'm just sorry."

I said, "All right, Mike, just forget about it. Just do your job. This is getting ridiculous." I said, "I can't be watching you all of the time." I said, "You're just taking me for a damn fool."

So I called Mr. Katz. I said, "Mr. Katz," I said, "Michael Brandt is not doing his work. He's playing me [1163] for some kind of an idiot." I said, "What do I do about it?"

He says, "Put a reprimand in his folder."

I said, "Okay."

I proceeded to go to personnel. I picked up a reprimand blank. I filled it out. I brought it back and I asked Mike to sign it. He refused to sign it. I brought it back to personnel and left it with the personnel girl.

- Q. I show you Respondent's Exhibit 10, and I ask you if you recognize what this is? (Handing) A. Yes.
- Q. What is it? A. This is the reprimand which I wrote in reference to Mr. Brandt's attitude towards the job.
- Q. Now, did you—you said you spoke to Mr. Katz? A. Yes.

- Q. Was it this Mr. Katz right here (Indicating)? A. That's correct.
- Q. Did you tell Mr. Kaye about it? A. Yes, I think I spoke to him after I had spoken to Mr. Katz.
- Q. You remember that first hearing at the NLRB back in April? A. Yes, I do.

[1164] Q. Did you testify? A. Yes, I did.

- Q. Did Mr. Brandt testify? A. Yes, he did.
- Q. You heard him testify for the union, didn't you? A. Yes, I did.
- Q. Now, when Brandt was discharged, were you present? A. Yes, I was.
- Q. Now, when was that and where was that and who was there? A. It was in Mr. Kaye's office. Mr. Katz was present; Mr. Zayle was present; I believe Mr. Kaye was off that day; Mr. Katz—oh, I said Mr. Katz; Mr. Brandt and myself were present.
 - Q. How did that come about?

Were you involved in getting Brandt up? A. Yes, I was.

I was summoned again to Mr. Kaye's office. I was asked to bring Michael Brandt with me.

- Q. Did you talk to Michael Brandt on the way? A. Yes, I did.
- Q. What did you tell him? A. I said, "What the hell did you do now?"
 - Q. What did he say? A. He said, "Gee, I don't know."

[1165] Q. Now, tell us what happened there? A. Mr. Katz again asked us to be seated. He said, "Brandt, we have information that you have continued to solicit on company time in areas in which you were told not to solicit in. I'm going to be forced to terminate you," I think he said.

I don't know if this is verbatim now. As I say, this is from what I recollect. But I know he checked with—I believe it was you during some part of the conversation that was going on.

Mr. Appell: I move to strike unless it's established that—I think it's hearsay.

The Witness: Hearsay?

Judge Cohn: Well-just a second, please.

The Witness: I'm sorry.

Judge Cohn: Are you saying that Mr. Katz at sometime during this conversation contacted Mr. Miller—

The Witness: That's correct.

Judge Cohn: -to your knowledge?

The Witness: That's correct.

Judge Cohn: Overruled.

Go ahead.

[1166] Q. (By Mr. Miller) Now, was I present? A. No.

- Q. Now, what did Brandt say? A. Again, "Who? Me?"
- O. You remember those words? A. Yes, I do.
- Q. Now, then what happened? A. Well, Mr. Katz had, I think, called payroll, or he demanded his money, I believe. Mr. Katz called payroll and asked him to bring him up to date on his money. I think there was a little commotion, though. I think Brandt objected to the fact that he wouldn't leave without his money. I don't think the money could have been drawn up immediately.

I think that's what the case was. I think there was a problem with drawing the money up right away.

Q. Do you know whether he eventually got his money? A. Yes, he eventually got it, right.

[1167] CROSS EXAMINATION:

[1168] Judge Cohn: Well, whether or not he had any belief is—

[1169] Q. Did anyone else talk to you about whether they signed cards? A. Frank Colletto did one time.

- Q. Where? A. On the way to the supply house.
- Q. He told you he signed? A. Yes, he told me he signed; yes.
- Q. How about Mr. Gambino, did he tell you he signed? A. No.
 - Q. How about Mr. Roudaboush? A. No.
 - Q. Mr. Cannon? A. No.
 - Q. How about Mr. Brandt? A. No.
 - Q. How about Mr. Izzo? A. No.
- Q. Did the subject of union ever come up with your employees? A. They spoke about it quite a bit.
- Q. Who spoke about it? A. They spoke between themselves.
- Q. Were you present? [1170] A. Sometimes, sometimes not.
- Q. Well, what did they say? A. Most of the time I wasn't paying attention because it didn't concern me.
- Q. How do you know they were talking about the union then? A. I heard the word "union" mentioned or "local."
- Q. And you didn't hear anything else? A. No, because I wasn't concerned.
- Q. So it's your testimony that as soon as you heard the word "union," you turned away? A. I didn't say that. I would be engrossed with something else or I would be on the phone.
- Q. Was this talk going on during the working hours? A. Sure.

- Q. Did you ever tell these people not to talk about union while working? A. Well, I had told them not to do any of their soliciting on the floor for union matters.
- Q. When did you tell them that? A. After Mr. Brandt was warned.
 - Q. Whom did you tell? A. The whole bunch of them.
- Q. Did you have any knowledge that anyone other than Brandt was soliciting? [1171] A. I had no knowledge Brandt was soliciting at that time.
 - Q. I see.

Where else did you hear "union" mentioned? A. At the hearings.

- Q. Is Mr. Schob of equal rank in the company with you or are you above him? A. I believe I'm higher than he is.
- Q. Does he report to you? A. No, he doesn't. He has no connection with me whatsoever.
- Q. Who asked you if you thought they would get fired if they signed union cards? A. I don't remember who it was. Someone in the shop asked me. I believe we were working on the billy goat at the time.

There were a few men working on it. I don't remember right now who it was. They didn't ask me if they were going to get fired, they just said, you know, would we be flown out of here or anything like that if the union don't get in?

Q. Well, how many people were present at that time? A. Possibly Gambino, possibly Klepack, and maybe Roudaboush, and Brandt.

[1172] Q. Well, when before June had you ever reported to Mr. Katz before about a problem? A. Oh, God.

I don't know how many times. I have no recollection of how many times it y as.

- Q. Did you ever tell these people not to talk about union while working? A. Well, I had told them not to do any of their soliciting on the floor for union matters.
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- [1172] Q. Well, when before June had you ever reported to Mr. Katz before about a problem? A. Oh, God.

I don't know how many times. I have no recollection of how many times it y as.

- Q. Well, about what type of problem? [1173] A. Problems with men.
- Q. Well, give some examples. A. Oh, I had a fellow by the name of Joe Dellasandro who was working in my crew when I first came into the store.

He was non-productive. He was making more money than the other people. There were a lot of problems going on about the wage differences. I wanted to fire him. But before I did, I spoke to Mr. Katz about it.

- Q. What kind of problems about wage differences? A. He was making quite a bit more than the other people that were working for me. These other people were better mechanics and couldn't understand why one was making more than the other.
- Q. Was he making less that the others? A. I beg your pardon?
- Q. Was he making less than the others? A. This fellow who I'm speaking of?
 - Q. Yes. A. No.

He was making more.

- Q. And he was complaining that some people—A. No, he was not complaining. The people in the shop were complaining.
 - Q. And what were they saying?

Judge Cohn: Oh, come now, Mr. Appell, I don't want [1174] to try this case. You asked him for other types of situations when he complained to Mr. Katz. He gave you those.

Please go from there.

Mr. Appell: May I have that answer read back, please, your Honor?

I did not understand it.

Judge Cohn: Well, the situation simply is that the

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Please go from there.

Mr. Appell: May I have that answer read back, please, your Honor?

I did not understand it.

Judge Cohn: Well, the situation simply is that the

reason he complained to Mr. Katz was because there were other people in the department who were making less than this fellow was and they deemed him not to be as good a mechanic as they were, so they complained to him and he passed it on to Mr. Katz.

Q. (By Mr. Appell) To your knowledge, did Mr. Katz ever talk to such employee before whom you had complained about, directly? A. I wouldn't know.

Q. This was the first time, to your knowledge; is that

correct? A. Which was the first time?

Q. When he spoke to Brandt. A. No.

I believe he's spoken to people before that. You know, what they talk about, I don't know.

[1175] Q. Well, do you have any knowledge, personally, of him talking to an employee before? A. Yes.

Mr. Alan Abraham went to Mr. Katz one time and asked him for an increase over my head.

[1178] Judge Cohn: As I understand it—and correct me if I'm wrong—the issue with Mr. Brandt is not whether or not he did his work properly or improperly, it's simply one of whether or not he broke a rule with respect to soliciting on company premises on company time and whether [1179] or not that was a valid rule and that sort of thing.

It seems to me, as I say, that while certain questions regarding the witness' testimony on direct are subject to cross-examination, I just don't want you to lose sight of that principal issue.

P. R. DeRonde, for Respondent, Cross.

Am I correct in that?

Mr. Miller: The only reason-that's right.

The only reason we have always maintained, and I so told you, that Brandt was discharged was because Brandt violated specific instructions given him by Mr. Katz.

Judge Cohn: With respect to the rules?

Mr. Miller: That's right, with respect to solicitation in certain areas after—I must insist upon this—being told where he could do this solicitation.

Judge Cohn: All right; it had to do with that.

Mr. Miller: That's right.

Judge Cohn: And not with whether or not he replaced the light bulbs or not.

Mr. Miller: That's correct.

That didn't enter into the discharge.

Mr. Appell: Your Honor, if I may be heard briefly.

I am aware that any attorney, including myself, can be myopic. I am trying to find out whether Brandt was [1180] treated differently from other employees, such that a whole pattern of discrimination can be shown which would explain why he was ultimately discharged in June. The fact that Mr. Brandt might have received warnings that no one else would have received, even though this problem had been going on for sometime and was a general problem in the department, may help show that the ultimate discharge on the grounds of a violation of a presumably valid rule was in fact pretexture.

And so I think it does go to the nature of why Mr. Brandt was singled out and discharged.

Judge Cohn: Well, I think there—and I would not sustain an objection to your questions up to this point with respect to his receiving the warnings, et cetera.

P. R. DeRonde, for Respondent, Cross.

But I just merely, as I indicated primarily, the questions may be technically proper if for no other reason than to test the witness' creditability, but there is a limit beyond which—and this record is getting pretty unwieldy at the moment—and I just request that you consider what the primary issue is here.

Mr. Appell: For that matter, your Honor, I would note that Respondent's Exhibit 10 is a warning to Brandt that Respondent apparently deemed relevant, and it makes no reference to soliciting for union activity or any kind of soliciting. It does make a reference to requirements [1181] to relamp and change burned out ballasts in the morning.

Judge Cohn: So reading on, though, it says he spent his time walking around the store and sometimes speaking to other people about the union.

Mr. Appell: No, not soliciting.

Judge Cohn: Well, whichever.

When talking becomes soliciting, sometimes it's a vague step there.

- Q. Is it your testimony that you heard nothing between Brandt and Gribbins when you saw them talking? A. That's my testimony.
- Q. Did you make any effort to tell Brandt at that point that he was not supposed to talk and would he please go back to work? A. No.
- Q. You just left him there and he kept talking at the time you left? A. No.

He left before me.

Q. So you watched for the whole conversation? A. That's exactly right.

P. R. DeRonde, for Respondent, Cross.

Q. How long did that conversation take? [1182] A. I would say somewhere in the vicinity of four to six minutes.

Q. Did he give her any cards? A. I couldn't tell if he gave her any cards.

Q. Did you hear him solicit for the union? A. I told you I didn't hear what they said.

Q. After you talked to Katz the first time, did he tell you to keep in touch with him on Brandt? A. No.

He never got back to me.

Judge (5hn: And so I gather in that line that from the time of the first warning until the day of his discharge, you had no contact with Mr. Katz about Brandt?

The Witness: At hearings I did, yes. We had union hearings here. I was with Mr. Katz at that time.

Judge Cohn: Listen to my question.

The Witness: I'm sorry.

Judge Cohn: Do you recall the time when Mr. Katz warned him?

The Witness: That's correct.

Judge Cohn: That is, Mr. Brandt.

The Witness: I recall that, yes.

Judge Cohn: I think you testified that was on-

The Witness: June 7th.

Judge Cohn: -June 7th?

[1183] The Witness: Yes, sir.

Judge Cohn: And then there came a time on June 13th when he was discharged; is that correct?

The Witness: Yes.

Judge Cohn: My question is whether or not during that week you had any contact with Mr. Katz concerning—

The Witness: Yes, I did.

Judge Cohn: —Mr. Brandt?
The Witness: Yes, I did.
Judge Cohn: What was that?

The Witness: The day I put the report in, which, I believe, was June the 11th. That was the day that I wanted to terminate him and Mr. Katz told me to put a

reprimand in his folder.

Judge Cohn: I see.

Go ahead.

Mr. Appell: No further questions, your Honor.

RE-DIRECT EXAMINATION:

- Q. (By Mr. Miller) On this June 7th, were you ever present when Mr. Katz warned one of your people on your staff about solicitation? Were you ever present, that is, before June 7th? A. No.
- Q. Did a warning about solicitation take place in your presence by Mr. Katz before June 7th, ever?

[1184] Mr. Appell: Objection.

Asked and answered.

Judge Cohn: I'm sorry, I missed the question. Would you read the question, please.

(Record read.)

Mr. Miller: I didn't hear him say no. I thought he hadn't answered me.

Judge Cohn: Withdrawn.

- Q. (By Mr. Miller) So this was the first time this had happened? A. That's correct.
- Q. Now, when your people are working, do you object to their talking? A. No, as long as they don't stop what they're doing.
- Q. Did you have any rule about no talking while you're working. A. I had a rule that I didn't want my men walking about the store—

- Q. I'm not asking you about that. A.—speaking to other employees when they were supposed to be working. I wanted them in the shop to do their talking if they had any talking to do.
- Q. Actually I'm talking about when they're physically doing a job. A. No, I didn't want them to talk, to carry on [1185] conversations.

Judge Cohn: Did you say that you had a rule or something like that that your men couldn't talk to each other during working hours?

The Witness: Well, I didn't specifically say I don't want you talking to each other during working hours, no.

I told them that I didn't want them carrying on discussions with anybody on the floor, that is, on the [1187] selling floor or other places outside of my maintenance shop. When they finished their job, I wanted them back in the shop, I didn't want them wandering about or discussing anything with anybody on the floor.

Judge Cohn: Well, you didn't take any action to interrupt Mr. Brandt when he was talking to Miss Gribbins that morning, did you?

The Witness: No, I did not.

Judge Cohn: Why didn't you do that?

The Witness: I wanted to see what his answer was when I confronted him with my findings of what he had been doing for the period of time which I was concerned about.

Judge Cohn: I don't understand your answer.

The Witness: Well, what I'm trying to say is I didn't confront him at the time because I didn't think it was the place, nor did I want to do it there.

I wanted to see if he was going to go for coffee and what he was going to do before he went to coffee.

I wanted to give him a chance to go up and lamp the floor. And when I found out that he had carried on the whole morning in this way, I let him go about and do it until to the point where he was supposed to be off the floor.

That's why I didn't confront him at that time. I gave him—I gave him the benefit of the doubt. I mean, [1188] I realize that some things go—I always had a good rapport with my people. I had to find out definitely that there was something going on before I would take any action.

Judge Cohn: Well, did you see him talking with anyone else other than Miss Gribbins that morning?

The Witness: That morning?

Judge Cohn: Yes.

The Witness: I don't believe so. He might have spoken to somebody between the time he got from the second floor to the basement because I didn't go the same way he did; I came down another way.

Judge Cohn: All right.

Now, I believe you testified in response to a question of Mr. Appell that after Brandt had been warned, you told your men not to solicit.

Is that correct?

The Witness: That's correct, the first time he was warned.

Judge Cohn: And that was on about June 7th?

The Witness: That was June 7th. Judge Cohn: That was June 7th?

The Witness: Yes.

Judge Cohn: Did you gather your men together and tell them after that?

[1189] The Witness: Well, when I came back with Brandt—naturally they were concerned why Brandt was called in, because they had an idea of what was going on because Brandt was called off the job.

They said, "What happened?"

He said what had happened to him.

I said, "Look, Mr. Katz has told Mike Brandt not to solicit on the selling floor another employee who is working on store hours." I said, "Don't do it."

Judge Cohn: Is it fair to infer that before that time that there was no such rule?

The Witness: Well, I don't think there was a rule for soliciting for unions, I don't think that there was a rule that I made known.

Judge Cohn: Well, was there a rule against soliciting for anything?

The Witness: To tell you the truth, I really don't know.

[1190] RE-DIRECT EXAMINATION:

Q. (By Mr. Miller) I show you Respondent's Exhibit No. 4 in evidence, Mr. DeRonde, and ask you if you have ever seen this before?

(Handing). A. Yes.

Q. What is it? A. This is a pamphlet which is given to an employee as he or she takes a job in Mays.

Q. Did you see Page 14, Number two before? A. Yes, I have.

M. Zinkofsky, for Respondent, Direct.

Q. Well, did you believe that Mays was joking when they issued this?

Mr. Appell: Objection. Judge Cohn: Sustained.

- Q. (By Mr. Miller) When did Izzo come to work? A. Oh, he's been working for me now close to two years, I believe.
 - O. What about Colletto? A. About four years.
- Q. What about Roudaboush? A. Approximately the same length of time as Brandt.
- Q. What about Gambino? A. A little over a year. [1191] Q. What about Klepack? A. I would say maybe two years.

Mr. Miller: That is all from me, your Honor, from this witness.

Judge Cohn: Any further cross examination?

Mr. Appell: No, your Honor.

Judge Cohn: You may be excused.

Thank you, Mr. DeRonde.

[1192] Mr. Miller: I call Mr. Zinkofsky.

Whereupon, MARTIN ZINKOFSKY was called as a witness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:

Direct Examination:

- Q. (By Mr. Miller) What is your full name? A. Martin Zinkofsky.
- Q. Mr. Zinkofsky, are you, also, known as Mr. "Z"? A. That is correct.

M. Zinkofsky, for Respondent, Direct.

- Q. What's your job? A. I'm assistant to Mr. Zayle in Operations.
 - Q. Do you work for J. W. Mays? A. That's correct.
 - Q. Massapequa store? A. Yes.
- Q. And you are assistant to Mr. Zayle? A. Yes, in Store Operations.
 - Q. Mr. Zayle is? A. Assistant Store Manager.
- Q. How long have you had this position? [1193] A. The last two years.
- Q. And what are your duties? A. I walk all over the store to make sure that everyone is working and see if I see any different areas where there is lack of help. I find other areas where there is more people there and they can use additional help in the other area, I usually move people around if necessary.
- Q. And how much of your time do you spend walking around the store? A. Most of my day.
- Q. Now, do you know a man called Murphy? A. Yes, I do.
- Q. What was Murphy? A. He was a Maintenance Housekeeper.

Mr. Miller: Well, again with your permission, I'll cut out the preliminaries and try to get right down to the point of what we are here for.

Judge Cohn: Thank you.

- Q. (By Mr. Miller) Did you see Murphy and Brandt talking? A. Yes.
 - Q. Where? A. Outside the dumpster.
- Q. When was that? A. I believe it was in June. It was during the summertime.
- [1194] Q. In June? A. June.
- Q. Now, where were you? A. I was coming out onto the platform, checking out to make sure that the garbage is all cleaned up on the outside after they dump it.

M. Zinkofsky, for Respondent, Direct.

Q. Is that a regular part of your duties? A. Yes, because of one reason: If they don't cleanup—

Judge Cohn: Is the answer yes?

The Witness: Yes.

Judge Cohn: All right.

Next question.

- Q. (By Mr. Miller) When you saw Murphy and Brandt, what did you do? A. I looked at both of them.
 - Q. And then what did they do? A. They started to work.
- Q. What did Murphy in particular do? A. Well, he was cleaning up at the time.
- Q. Now, did you—did you know that Brandt was a member of the union, at that time? A. No, I didn't.
- Q. Did you testify at a Labor Board hearing in this building? A. Yes.

[1195] Q. When did you do that? A. It was in July.

- Q. Did you testify in April? A. No.
- Q. Now, did you report what you seen to Mr. Kaye? A. No.
- Q. Did you report it to anyone? A. I spoke to the maintenance housekeeper in charge, which is Harry.
 - Q. Harry Schob? A. Yes.
- Q. What did you tell Harry and what did Harry tell you? A. I told Harry to make sure that his man is working out there and not standing around and having a hen session.
- Q. Did you know what they were talking about? A. No, I didn't.

[1197] Q. Now, what is the MEA? A. That's an organization we have in the store when we sponsor dances or gatherings or promotions for all of the employees.

M. Zinkofsky, for Respondent, Cross.

- Q. Now, do you know when its business is carried on? [1198] A. Pardon?
- Q. Do you know when the MEA's business is carried on? A. It's usually carried on before the store hours or during lunch hours.
 - Q. Do you have loudspeaker announcements? A. Yes.
 - Q. Frequently? A. No.

When we're having an affair, we—we just had one affair this last Saturday night. We ran a Christmas Party for all of the employees.

Q. Okay.

Did you have an announcement about that? A. Yes, we did.

- Q. How long did that announcement take? A. Two minutes.
- Q. Now, how many charity meetings do you remember taking place last year, 1973 I mean? A. We had one, I believe.
- Q. Do you know what it was? A. It was mainly for—excuse me. I have to correct myself. I'm thinking about a bond drive that we had in the store.
- Q. Where did that go? Where did that take place? A. That was taken in the cafeteria before store hours, [1199] before the store opened.
- Q. Now, are employees permitted to stop work and do private business? A. What's that?
- Q. Are employees permitted to stop work to do private business? A. No.
- Q. Are they allowed to talk while they are working? A. As long as they're accomplishing what they're doing. I'm not that strict with them.

[1200] CROSS-EXAMINATION:

Q. (By Mr. Appell) Mr. Zinkofsky, when did you first learn about the union organizing a drive in Mays? A. Well, sometime in July.

M. Zinkofsky, for Respondent, Cross.

Q. Did you know of it earlier than that? A. No, I did not.

[1201] Q. Well, how long did you see Murphy and Brandt talking? A. Well, when I walked or latform, on the platform, how long does it take to to that room on the other side of that wall? Just a to conds.

They saw me and they started to work.

[1203] Q. Do you remember a bond drive? Is that correct? A. That's correct.

Q. Was that for the State of Israel? A. It was for the—yes, it was, for Israel.

Q. Do you remember when that was? A. I-

Judge Cohn: Well, there was testimony here that it was in or about October. I think everybody is aware of it.

[204] A. The dates, I don't—I think it was around October or November, around that area.

Q. When announcements are made over the loudspeaker for the MEA, do customers hear these announcements? A. Oh, no. It's done before the store opens.

Q. But it's after people are already working on the job; is that correct? A. Well, normally they come in and before they go up to punch their cards or before they go in, they usually come into the store and go into the cafeteria for their breakfast. They usually hear the announcements then.

Q. What time do sales employees arrive? A. Well, they have to be on their—their scheduled calls for 9:45, but a lot of them arrive before that time.

Q. And would you say that the announcements are not

M. Zinkofsky, for Respondent, Re-direct.

made over the loudspeaker until most of the people are in at work already? A. Well, most of them are in by 9:30. Don't forget, they have to hang up their clothes, they check it, and they get on the selling floor. You know how women are, they like to stand and talk to one another before they get going.

- Q. People are at work when these announcements are made, aren't they? A. They're not punched in, not yet.
- Q. No one is working when these announcements are made? [1205] A. Now, you're talking about selling employees; right?
 - Q. Well, you tell me. A. I want that clarified, please.
- Q. Well, I'd like you to tell me. Who is working and who isn't? A. Well, the sales help are not working at the time yet. They are coming in and they're hanging up their clothes and changing. Then they hear the announcement.
- Q. They are punched in for work already, are they not? A. No, they're not.

I didn't say that.

Q. They did not punch in? A. No.

RE-DIRECT EXAMINATION:

- Q. (By Mr. Miller) You testified before I believe in answer to a question by counsel as to the normal practice with respect [1206] to warnings. A. Yes.
- Q. Now, I believe you said that you did not recall anybody who was fired with only one warning.

Is that correct?

- Q. Now, did that normal practice apply when people were caught stealing? A. Oh, that's different, then, entirely different.
- Q. Well, did that rule apply if someone was caught fighting? A. Not to fighting, no.

L. Manzi, for Respondent, Direct.

- Q. Well, what about if someone were caught smoking in a prohibited area? A. Well, we warn them, but—
- Q. Do you ever have instantaneous dismissals for smoking in a prohibited area? A. Yes, we have now.
- Q. Well, when did you have now? What does "now" mean? This year? A. No.
 - Q. Well, how long? A. Well, for the last two years.

[1213] Whereupon, LOUIS MANZI was called as a witness and having been first duly sworn by the Administrative Law [1214] Judge was examined and testified as follows:

DIRECT EXAMINATION:

Q. (By Mr. Miller)

[1219] Q. I show you Respondent's No. 4 for identification, Mr. Manzi, and ask you if you recognize that? (Handing).

A. Yes.

Q. What is it? A. This is a pamphlet that's handed out to all employees when they're employed. At the time I was employed, I received one.

[1226] Q. Well, do you have a desk? A. No.

I use a shop phone, and I have a shelf that I keep my records on. I don't have a closed office per se, you know, as an office.

Q. A shop phone, you say? [1227] A. Yes.

L. Manzi, for Respondent, Direct.

Q. And if someone wants to reach you, what do they do? How do they get you? A. They would dial the operator who is in the store at the information desk. She would page me either by name or by my page number. I have a page number, you know, as well as a name that could be used during paging.

Q. Could they get you by calling the shop phone? A. Yes, they could reach me in the shop, also.

Q. Either way? A. Yes.

Q. Now, what is your page number?

What is your page number? A. My page number is 96.

Q. Well, can you tell us, who is supposed to know your page number in your department, I mean? A. The people that work with me, as well as the telephone operator in case of an emergency.

Q. About how long have you had that number? A. Since I have been employed.

Q. Have you been paged by that number since you've been employed? A. Yes.

Q. And who has paged you? A. Any—well, departments page me sometime if they [1228] know me, know my number, and my workers call me by that number, also, if they need assistance.

Q. Now, have you been page by Miss Gribbins? A. Yes, on occasions.

Q. When was the last time you were paged by Miss Gribbins? A. That, I can't recall.

Q. Now, this shop phone is located on what floor? A. The shop phone?

Q. Yes. A. The shop phone is located on the lower level.

Q. Now, do the people in Display wear any kind of a uniform? A. No, not a uniform. They wear clothing that's appropriate to the job. For example, I'm wearing work pants today and I had to leave my job to come here to testify.

Q. Now, does Miss Gribbins wear a uniform? A. Not a uniform. Maybe slacks. That sort of thing. Maybe a pantsuit.

L. Manzi, fcr Respondent, Cross.

- Q. Did you tell Miss Gribbins to—did you discuss Miss Gribbins' clothing with her? A. You mean just in general or at a particular time or—
- Q. Well, at a particular time. A. On one occasion where she had come in to work wearing [1229] a mini dress. I felt it was inappropriate for her to be working on a ladder or in a window because we would cause embarrassment to herself, so I suggested that she wear stacks or keep a pair of slacks in her locker so she could change and work appropriately.
- Q. Now, did you ever discuss blouses with her? A. No, not in particular.

[1230] Q. Now, did you know that—or, do you know—strike that.

At the time that Miss Gribbins was employed, did you know that she had some connection with the union? [1231] A. No, sir, I did not.

[1233] CROSS EXAMINATION:

Q. (By Mr. Appell) * * *

[1242] Q. Would it be fair to state that sometimes some of your male employees go out for haircuts on company time if they get your approval first?

Mr. Miller: Objection.

Not within the—not within the—I don't think I'm leading now.

Judge Cohn: Sustained.

- Q. (By Mr. Appell) Do you ever give permission to employees to go on the selling floor or through the selling floor during the working day? A. To do what?
 - Q. Perhaps in the course of leaving the store? A. No.

[1266] Whereupon, VITA POMA was called as a witness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:

Direct Examination:

- Q. (By Mr. Miller) What is your full name? A. Vita Poma.
 - Q. Is that Miss or Mrs.? A. Mrs.
- Q. Mrs. Poma, are you employed by J. W. Mays? [1267] A. Yes, I am.
 - Q. In what store? A. Massapequa.
 - Q. And what is your job? A. Personnel Manager.
- Q. How long have you been Personnel Manager, Mrs. Poma? A. Since January of this past year.
 - Q. That's January 1973? A. Right.
- Q. What were you before that? A. I was the assistant in the office.
- Q. Now, what are the duties of a Personnel Manager in the Personnel Department? What do you do? A. Well, my main duty would be to hire people. Occasions arise to fire people. That is the main duty.
 - Q. And do you keep jackets of A. Yes.
 - Q. —employees? A. Yes, we have files; right.
- Q. Now, when a new person gets hired—well, strike that, please.

I show you Respondent's Exhibit No. 4 in evidence, and ask you if you can recognize wha' this is?

(Handing.)

[1268] A. Yes.

- Q. What is it? A. This is a booklet that we used to give out in the office.
- Q. You don't give it out now? A. Don't since I've been in charge, no.

Q. Well, do you know why? A. Specifically, no.

Judge Cohn: Well, Mr. Katz testified why.

Mr. Miller: All right.

Judge Cohn: I really wouldn't expect this witness to know why.

Q. (By Mr. Miller) Well, it tells newly hired personnel what they're supposed to do, where to go and so on? A. We do in the office, right.

Q. What do you tell new hire. A. Well, in the process of conversation, they are told more or less about the store, about the work they're required to do, how to dress, you know, all—

Q. Well, do you tell—do you tell them their duties? A.

Q. Are they allowed to do private business on the floor?
A. No.

Q. Now, with respect to female employees, do you give [1269] them anything? A. They're given a plastic purse which they're allowed to carry on the floor for personal things, a wallet, a comb, lipstick or something like that.

Q. Well, do you know why they're given that little trans-

parent purse? A. Security reasons mostly.

Q. I have here—I happen to have one. I have here a piece of—an article in my hand. I ask you if this article is a plastic purse that you gave— A. That is the plastic purse, right.

Q. -to female personnel? A. Right.

Mr. Miller: I draw your Honor's attention to the fact that it is about 6 x 7 and it has a zipper on the top of it. I would like to offer this in evidence. I don't know how you're going to mark it, but I'd like to offer it in evidence.

I show this to Mr. Appell at this time. (Handing.)

Judge Cohn: Well, you could put an exhibit number or something inside, attach it in some way. I assume you could get another one for a duplicate.

This will be Respondent's Exhibit No. 11 for identification.

(The above-mentioned was received [1270] and marked as Respondent's Exhibit No. 11 for identification.)

Judge Cohn: Any objection? Mr. Appell: No, no objection.

Judge Cohn: All right.

Respondent's Exhibit No. 11 will be received into evidence.

(The above-mentioned was received and marked as Respondent's Exhibit No. 11 into evidence.)

- Q. (By Mr. Miller) Mrs. Poma, what are they supposed to do with their own handbag? A. Well, normally on their first day they don't have a locker, so there's a check desk at the employees' entrance. This is where they leave it until they have a locker.
 - Q. I see.

Now, how long has this rule been—how long has this procedure been in effect? A. Ever since I've been in the store. I don't know how long.

- Q. Well, how long have you been—strike that, please. You've told us how long you've been in the store. A. Right.
- Q. Now, what do you tell—you told us about the new [1271] employees. I believe you said you told them about working and all that.

What else do you tell them? A. Well, their privileges.

Judge Cohn: What did you say? The Witness: Their privileges, sir.

- Q. (By Mr. Miller) What else? A. Any sick days and all about insurance.
 - Q. Now, do you know what the MEA is? A. Yes.
 - Q. What is it? A. That is the Mays Association.
 - Q. Are you a member? A. Yes, I am.
- Q. And when does that do its business? A. Well, normally in the morning there's breakfast in the cafeteria, and this is where if anything has to be said about it, this is where they—it usually has to do with organizing a party or something.
 - Q. Now, what about charities? A. Charities?
 - Q. Yes.

[1272] Judge Cohn: Back on the record.

Mr. Miller: Will you please read back the last question, Mr. Stenographer.

(Record read.)

- Q. (By Mr. Miller) What about charities? A. The only charity that I can think of is the United Fund that once in a while comes to the store. That's the only thing I can think of.
- Q. Are employees allowed to ask for charities on the floor? A. No.
- Q. When do they learn that? A. Well, they are more or less—they are, you know, more or less told about that when they start working. Not exactly that way, you know.
 - Q. You mean when they're hired? A. Right.
- Q. Well, what do you tell them? A. Well, actually they are told that they're hired to do a job, a specific job, and that on business time and company time they're supposed to do their work. Anything else is not right.

[1277] Q. This is on August 20th, I'm talking about. A. The 21st.

V. Poma, for Respondent, Cross.

Q. I'm sorry, I didn't mean to confuse you.

I want to go back to August 20th. A. No, I was not there on

August 20th.

- Q. Where did you write? A. This was written in my office, if you're referring to this.
 - Q. Oh, I see; yes. A. In my office.

Judge Cohn: And when you say "this," it doesn't make much sense on the record.

What are you talking about?

[1278] The Witness: The reprimand slip that I was just shown.

Q. (By Mr. Miller) Are you referring to—are you referring to Respondent's Exhibit No. 3, this slip?

(Handing.)

A. Yes.

Q. I see.

This was written in your office? A. Right.

Q. And who told you—and how did you come to write it? A. Now, I was given the information from Charles and from Mr. Kaye to prepare this.

Q. I see. A. And then Laura was given the reprimand to sign it, you know, so she knew what was going in her folder.

[1281] CROSS EXAMINATION:

Q. (By lar. Appell) Mrs. Poma, who distributed that handbook? Who was responsible for distributing this handbook to employees? A. Well, it used to be personnel's responsibility to hand that out. I don't have any now.

Q. Well, did you personally distribute them to all the employees when they were first printed up? A. Well, at that time, I wasn't in charge. But I did [1282] give them out when I was

working as the assistant.

Q. To new hires? A. New hires, right.

Q. That's when you became assistant you did that or when you became the manager? A. While I was an assistant in the office.

Q. What dates were you assistant manager? A. Well, that would go back to '72. I would say about August of '72 'til I took over.

[1286] Judge Cohn: Back on the record.

Let the record show that at the commencement of the hearing, General Counsel proffered some—General Counsel Exhibit No. 2-A, -B, -C, and -D. They were some documents in connection with some representation case proceeding. Upon objection, I rejected the exhibits. I believe in view of the evidence as has been adduced in the proceeding, that it might be helpful to have it incorporated into the record.

So, if counsel still has those papers, I'll consider a reoffer.

Mr. Appell: In accordance with your request, your Honor, I would offer at this time General Counsel's Exhibit [1287] 2A, which is the petition filed March 22nd, 1973 in Case 29-RC-2202; as 2-B, the decision and order in that case; as 2-C, the petition—

Judge Cohn: Just a minute. Would you give the date 2-A?

Mr. Appell: 2-A, the date is March 22, 1973.

Judge Cohn: Thank you.

Mr. Miller: That's the petition?

Mr. Appell: Yes.

Judge Cohn: The petition.

And the date in 2-B?

Mr. Appell: May 29th, 1973.

Mr. Miller: And that's another petition?

Mr. Appell: That's the decision.

Mr. Miller: That's right, yes.

Judge Cohn: All right.

Mr. Appell: 2-C is the petition in Case No. 29-RC-2287 filed June 19th.

2-D is the decision in that case, which is dated August 30th, 1973.

Judge Cohn: All right.

Thank you.

(The above-mentioned was received and marked as General Counsel's Exhibit 2-A, -B, -C, -D for identification.)

Judge Cohn: Do you have any objection to the receipt [1288] into evidence of General Counsel's Exhibit No. 2-A, -B, -C, and -D?

Mr. Miller: No. sir.

Judge Cohn: They will be so marked into evidence.

Mr. Miller: While you're at it, I believe serving a similar purpose would be the introduction of two exhibits in this case.

One would be a list of those who testified in the first proceeding, and then a list of those who testified in the second proceeding.

And then I would like to introduce to you an exhibit which was placed in evidence in the first case. I hope you will allow me to give you a short recital rather than incorporating the entire transcript, and indicate to you what this is because this piece of paper played somewhat of a key role in the disposition of the first matter.

Judge Cohn: Well, as I say, you can explain it. I don't know whether I will agree with you or not.

Mr. Miller: That's right.

Mr. Appell: Your Honor, I should like the record to note, also, that I was in no way involved in the representation cases and I am not at an advantage to either verify or dispute what counsel for the Respondent may have to say.

[1289] Judge Cohn: Well, in order to keep the record straight, though, if you don't have any objections to it, I would like—and I realize it's not your exhibit. We ought to keep the record straight.

Let's have that list of witnesses in each case-

Mr. Miller: If you will stay with me, Mr. Appell. Judge Cohn: —as 2-E and 2-F.

Mr. Miller: Yes, sir.

I have here the transcript of 29-RC-2202. There were two hearing dates.

One was—the first one was April 17th, 1973. On that date they had Simon Katz and Paul DeRonde.

On May 2nd, 1973, they had Michael Brandt, Salvatore Gambino, John J. Cannon, Paul DeRonde, and Simon Katz.

Judge Cohn: Well, since you've read them into the record, then we don't have to have exhibits.

Mr. Miller: Yes, I guess you're right.

Now, in 2287, I'll ask Mr. Appell to again verify the correctness of my reading into the record.

On the first day, which was July 11th, 1973, and there the witness was Simon Katz and Al Kaye.

The second day of the hearing was July 17th. And there the witnesses were Simon Katz, Bernard Murphy, and Martin Zinkofsky.

[1290] On July 23rd, the witnesses were Miss Laura Gribbins, Charles Hord, and Thomas McCaffrey. Those were the witnesses on that day.

Judge Cohn: All right.

Thank you.

Mr. Miller: Now, in the first hearing, at page—I will show it to Mr. Appell in the hope that we might thereby not have to put anything else into evidence but the barest necessities. There's a reference there to an Employer's Exhibit 1 that was admitted after voir dire and so on and so forth.

This is the Exhibit I that I have in my hand now that is referred to. And with your permission, your Honor, I would like to make just a very brief statement, the truth of which you don't have to buy. I can only assure you that it's true. That what happened there was tney asked for seven people, if you recall, some seven people or so in the maintenance helper group. That was the first petition.

Judge Cohn: Originally, yes.

Mr. Miller: That's right.

That was, I think, Exhibit No. 2-A, or something like that.

And one of the things that Mays did was to say: Well, here are a list of people who perform duties in many [1291] areas quite similar to the ones that you perform, wholly apart from all of the other objections we made. So we filed that exhibit.

It is then our position, and it will be argued—there are no witnesses here, so I can say this—and it will be argued by us that one of the bases for the next petition was the introduction of this exhibit. Briefs were written upon the use of the new petition made of this exhibit in that he took the original seven plus the others whom we showed did several jobs that were similar and then said to make a unit out of that, more or less.

There are a few others he added, too. So, this paper will then indicate, so far as I can see, the primary objects of the union's attention during the period intervening between the first case and the second case.

This is why I thought this piece of paper might be important to you and might be deemed to be of relevance.

Judge Cohn: Well, I can see a certain logic in what you are stating. It may very well be that the union took the position that, well, if the company is contending that instead of one department, which would be inappropriate, there should be included three or four departments, and that the company would consider that an appropriate unit, then we—meaning the union—will go ahead and petition for [1292] that unit.

Mr. Miller: Well-

Judge Cohn: And then the company would not be in a position to say that that would be an inappropriate unit.

Mr. Miller: That was their thought.

Of course, they completely misread the first record in the first case

Judge Cohn: I don't want to get into that.

Mr. Miller: Right.

The more important point for me, however, is that this list of names—the Maintenance Helpers, some Maintenance Housekeepers, and some Display, you see, gave rise to that second—

Judge Cohn: Well, are you saying for the purpose of this proceeding that that might be helpful in determining who is involved in the proceeding.

Mr. Miller: That's right, who is being let go, who has not been let go, how, why, when, where. You will get a picture and see where they all fit in.

Mr. Appell: Well, I haven't seen the list yet, your Honor.

Mr. Miller: Here. I only have the one copy. (Handing.)

Mr. Appell: Your Honor, can counsel for the [1293] Respondent indicate when this list was compiled?

Mr. Miller: It was compiled shortly before the first hearing. It was admitted into evidence after voir dire, as shown on Page 34 of the transcript; 29-RC-2202.

Judge Cohn: Off the record. (Discussion off the record.)

Judge Cohn: Back on the record.

Mr. Appell: Your Honor, will counsel for Respondent stipulate that the salary information on this paper is accurate?

Mr. Miller: It is accurate to the best of my knowledge.

Judge Cohn: Well, it's his exhibit, Mr. Appell.

Mr. Miller: It's our exhibit.

Mr. Appell: Your Honor, I would—I might seek to use some of the information on this exhibit if it is received for purposes other than those counsel is introducing them for.

Mr. Miller: You can use it for-

Mr. Appell: I don't want to be precluded from that. That's why I asked if the information on it is accurate.

Judge Cohn: Well, it's in evidence for all purposes, as far as I'm concerned.

Mr. Appell: I would have no objection to receipt into evidence of this document.

[1294] Judge Cohn: All right.

Excerpts of Stenographic Transcript of Hearing of January 11, 1974.

Hearing no objection, can it be marked as Respondent's Exhibit—well, let's mark it as General Counsel's Exhibit 2-No.—

Mr. Appell: Well, it is Respondent's.

Judge Cohn: I just wanted it in the record. I thought it might—you know, it would be more appropriate in the record—

Mr. Miller: You can make it Respondent's 13, if you want to.

Judge Cohn: When the exhibits come out, there are General Counsel's Exhibit and Respondent's Exhibits. I thought since all this "R" case information was your exhibit without indicating it's your exhibit particularly, that I just thought it would be more convenient to locate it in the "R" Case, where it came from.

Mr. Appell: With that understanding, I have no objection to offering it.

Judge Cohn: All right.

It will be received as Exhibit 2-E.

(The above-mentioned was received and marked as Exhibit 2-E into evidence.)

[1322] Excerpts of Stenographic Transcript of Hearing of January 11, 1974.

PROCEEDINGS.

Judge Cohn: On the record.

Mr. Miller: First, I went back to my office last night and I looked in every place where a Mays file would be, and I

A. Zayle, for Respondent, Direct.

found no trace of those submissions that we were talking about with respect to Miss Rosseau and Marie Eckert.

Now, I now call Mr. Zayle.

Judge Cohn: Mr. Zayle, come around, please.

Whereupon,

ALVIN ZAYLE called as a witness, having been first duly sworn by Judge Cohn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Miller) What is your full name? A. Alvin Zayle.

Judge Cohn: What's your address?

The Witness: 44 Tulipwood Drive, Commack, New York.

- Q. Mr. Zayle, are you employed by J. W. Mays, Inc.? A. Yes, sir.
- Q. In what capacity? A. Assistant store manager, Massapequa.
- Q. And how long have you been so employed? A. Three and a half years.
- [1323] Q. What are your duties, Mr. Zayle? A. Store operations, maintaining the store, watching that everything is done right; just basically running throughout the complete store.
- Q. How much time do you spend in your office? A. Anywhere between 20 minutes to a half hour early in the morning.
- Q. And the rest of the time? A. Oh, usually I'm in about ten to 8:00 or five to 8:00 to about ten after 8:00, no later usually.
 - Q. When do you leave? A. At night?
- Q. Yes. A. 6:00 o'clock on my early nights. 10:00 or 10:30 or possibly even 11:00 at times on late nights.

A. Zayle, for Respondent. Direct.

- Q. Now, how long have you maintained this procedure? A. Ever since I've been with the store.
- Q. Were you with the store in any capacity other than assistant store manager? A. Yes. At one time I was operational manager.
- Q. I'm talking about this procedure. A. Oh, yes, I've always maintained coming in early and taking care of all of my paper work before the store opened, which would give me more freedom for the store.
- [1324] Q. Now, in March, did you cause anyone to be placed under surveillance? A. No, sir.
 - Q. In April? A. No, sir.
 - Q. Since that time? A. None.
 - Q. No? A. No.
- [1325] Q. (By Mr. Miller) Now, are people allowed to—are the employees allowed to talk while they work? A. If it's pertaining to the department problems.
- Q. Well, supposing it doesn't interfere with their [1326] job? A. Well, it's against company policy.
- Q. You mean to even talk while you're— A. I mean, you could talk to each other, hello, goodby, layout of merchandise of receiving coming in to go down. Everybody talks basically.
 - Q. Please listen to my questions, Mr. Zayle. A. Yes, sir.
- Q. The question is now, are people allowed to stop work in order to converse with each other? A. No.

Discussion.

[1335] Judge Cohn: Well, I'm just trying to get a feel for what goes on at the store, Mr. Zayle.

If a couple of sales ladies are standing together chatting, you don't know what they're talking about, do you normally go up and say "Separate"?

The Witness: Yes.

Judge Cohn: But if two employees are together putting up stock or something like that—

The Witness: No, I don't-

Judge Cohn: (Continuing)—and they're talking while they're doing that, you wouldn't do anything?

The Witness: No, sir.

Judge Cohn: Is that generally the way it happens?

The Witness: Yes, sir.

Judge Cohn: Thank you.

[1360] Mr. Appell: Your Honor, in connection with your last question, I would call upon respondent to provide the informatior or the record indicating when Mr. Fetisoff began his employment with Mays, unless it can be stipulated to that he was working at the time the Gribbins incident [1361] on August 20th occurred.

Judge Cohn: Well, again, it's a little late in the day. But if that information can be secured without too much problem, I believe it should be.

Mr. Miller: Well, the information about this gentleman would probably be in Massapequa. I would have to go ahead and investigate and look into it.

Judge Cohn: Well, I would say that perhaps even after the close of the hearing if you want to indicate to Mr. Appell what the record shows and give him an op-

Discussion.

portunity to see it, however you want to arrange it—you might stipulate it even after the record.

Mr. Miller: No, sir, I would not. I would give him this only under the most urgent protest, the same protest I have been making every time he wants discovery from me as a part of his direct case that he should know this.

I would think that we're not following the rules of Federal evidence, with great respect. I think it is improper for him to keep making these requests and improper for him to keep having those requested granted.

Nevertheless, if you order me to do so, I shall be glad to comply.

Judge Cohn: Well, I'm not going to order you to do something after the record is closed, and I don't particularly [1362] want to keep the record open just for that purpose. But I will consider what might be done after—are there any more questions of this witness?

Mr. Appell: No, your Honor.
Mr. Miller: No, your Honor.
Judge Cohn: You may be excused.

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MONICA SHAW
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